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No. 10989

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United States

24 v. 2424  
Circuit Court of Appeals

For the Ninth Circuit.

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JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL PETROLEUM, LTD., and  
WAKE DEVELOPMENT COMPANY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

In Four Volumes

Volume III

Pages 941 to 1409

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

FEB 26 1946







No. 10989

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division





Los Angeles, California,

Tuesday, January 23, 1945, 10:00 A. M.

The Clerk: United States of America vs. Jacob Morris Danziger, for further trial.

Mr. Lucas: Ready for the government.

Mr. Mainland, please.

The Court: Mr. Mainland has been sworn.

ALLEN G. MAINLAND

resumed the stand as a witness on behalf of the government and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. Mr. Mainland, what is your title or what position do you hold with the Securities and Exchange Commission?

A. My present title is Securities investigator expert.

Q. How long have you been with the Commission?

A. With the exception of a year and a half when I was away, continuously since June 1, 1938.

Q. What is the general nature of the work that you do for the Commission?

A. Principally investigations in connection with the enforcement of the Securities Act of 1933.

Q. And that entails what particular kind of work?

(Testimony of Allen G. Mainland.)

A. It involves the examination of books and records and the preparation of schedules from them; interviewing [619] members of the public who have purchased securities; interviewing principals of corporations who have issued securities; and rendering reports to the Commission based on my findings.

Q. Now, prior to going with the Commission were you engaged in accounting and auditing work?

A. I graduated from the University of Southern California in 1928 with the degrees B. S. in B. A., that is, Bachelor of Science in Business Administration; I majored in accounting, I worked for a year as an accountant for Haskins & Sells, at the end of which time I took and passed the C.P.A. examination; then I was for over eight years with an investment banking firm, first in the capacity of cashier, and later as assistant treasurer and chief accounting officer. The year and a half that I was away from the Commission I was assistant comptroller and chief cost accountant for Pacific Clay Products Company.

Q. That summarizes, briefly, your training both academic and practical up to the present time?

A. Yes, except, perhaps, I should say that about a year of the time I spent with the Commission has been on analytical work in connection with the cases for reorganization under the Chandler Act, which the Commission was participating in. During that time I was not working actively on enforcement of the Securities Act.



(Testimony of Allen G. Mainland.)

Q. Directing your attention to the defendant Danziger here, you met and talked with Mr. Danziger in the course of [620] your investigation of this matter?

A. Yes, I did, on perhaps ten occasions in his office, in addition to the times when he came to my office for the sworn testimony which has been read here.

Q. Directing your attention to the first time you met Mr. Danziger in the course of this investigation, tell us when it was and what you can recall of the statements made to you at that time by Mr. Danziger.

A. The first occasion was in October, rather, November 22, 1940. I told Mr. Danziger—this was in his office—that it had come to the Commission's attention that people in the east had been approached and apprised of certain supposed rights that they had evidently failed to exercise at some time in the past, and that it looked to us as though this was a campaign to sell stock of Trinidad International Petroleum Limited; that the Commission had asked me to investigate it.

On that occasion I did not ask for any documents from Mr. Danziger. He told me that there had been inquiries received from stockholders of Great Eastern Natural Gas. He said that originally Trinidad International Petroleum had entered into a contract with Great Eastern Natural Gas, and that an escrow had been set up in Wilmington, Delaware, where any Great Eastern holders who wished

(Testimony of Allen G. Mainland.)

to avail themselves of these rights would send their money, and I think it was the Commonwealth Trust Company of Wilmington, [621] Delaware, would divide the funds, sending approximately \$2.00 to the Great Eastern Natural Gas or their representatives, whoever they might be, and sending the balance to him and issuing stock in Trinidad and profit sharing notes out of certificates which had been supplied to this Commonwealth Trust Company by Wake Development Company for the purpose of executing that contract.

The only thing that Mr. Danziger handed me on that occasion was a ditto report.

Q. What kind of report?

Mr. Rose: I was just going to ask that.

(The record was read.)

The Witness (Continuing): Which he said had been prepared by E. H. Cunningham Craig, concerning the geology and the history of certain properties in the Island of Trinidad.

Q. By Mr. Lucas: All right. Now, can you recall anything else that Mr. Danziger said to you on that occasion?

A. Yes. He said that the company had acquired the right to develop the oil possibilities on a group of approximately 200 oil leases on privately owned land on the island of Trinidad; that a foreign company, that is not a British company, could not drill for oil in Trinidad without a special permit, and for this reason Trinidad had not yet—I mean T. I. P., Trinidad International [622] Petroleum Lim-



(Testimony of Allen G. Mainland.)

ited, had not yet been able to commence drilling activities because of that regulation; that he had made efforts through the State Department to obtain a permit for the company, and that as recently as two months before I called upon him he had had his last communication through the State Department, which he thought gave some hope that a permit to drill might be possible of attainment.

He said that the leases carried a rental provision, but that the rental provision providing for a fixed payment—cross that last out—the rental provision would not become effective until the permit to drill had been obtained.

Mr. Rose: Excuse me, Mr. Mainland. With the permission of the Court, may I ask this witness a question?

Mr. Mainland, are you reading from a memorandum that you have of your conferences with Mr. Danziger, or are you testifying from memory? I notice you looking at some papers.

The Witness: I am not reading a memo; I am referring to a memo which I prepared immediately after the conversation which I had with Mr. Danziger.

Mr. Rose: You are using that memorandum to refresh your recollection?

The Witness: Yes.

Mr. Rose: Very well. I thought you were reading a document, and in that case the document would speak for itself. [623]

The Witness: I would have no objection to of-

(Testimony of Allen G. Mainland.)

fering it, except my memos contain material that obviously wouldn't be acceptable.

Q. By Mr. Lucas: Go right ahead, Mr. Mainland.

A. Mr. Danziger said he had made a contact with sources of capital in England, although his own contract with T. I. P. did not provide—rather, that under that contract he was not required to secure financing, that his own contract was purely for the management and not for raising capital; that these sources of capital in England given him a tentative commitment to finance the initial drilling program of the leases; that in spite of the war, which at that time involved only England and not the United States, he had assurances that the capital would be forthcoming for the initial program which he said according to his estimates would be for five shallow wells, which he estimated would cost in the neighborhood of \$75,000.00. He said there was a hole eleven feet deep on the property, according to his information, and that there was oil oozing out of that hole. He said he had never visited Trinidad or the properties, but that he relied on the work done, or the report made by E. H. Cunningham Craig, who he said was an eminent British geologist, and on others who had seen the property.

I asked him why this property had not been thoroughly prospected in the past; to which he replied that according to his understanding publicly owned land in Trinidad had [624] been thor-



(Testimony of Allen G. Mainland.)

oughly prospected, but that privately owned land hadn't been, probably because it was held in so many small parcels and nobody had gotten together enough of these small parcels to make it practical to engage in thorough prospecting. Mr. Danziger said that the sole valuable asset of the company was the interest they had in these 200 leases in Trinidad.

I showed him a picture of Warren C. Carter as I then knew him. Mr. Danziger said he recognized him as a salesman for Great Eastern at the time he arranged his first deal with Great Eastern.

At the conclusion of the interview Mr. Danziger agreed to permit me to examine the files of Trinidad International Petroleum Limited in connection with my investigation, and also the books and records relating to the issuance and transfer of stock.

That was about all we covered on the occasion of my first interview with him.

Q. How long after that did you come back?

A. I came back again about the 24th of January.

Q. What year, '41?           A. '41.

Q. Tell us what was said between you on that occasion.

The Court: The date?

The Witness: January 24.

A. Mr. Danziger said that he definitely had never had a [625] list of stockholders of Great Eastern Natural Gas.

I asked him if he had any idea who might be

(Testimony of Allen G. Mainland.)

calling on the holders of Great Eastern. He said it might be De Hart, who he said was the former president of Great Eastern; it might be Warren Carter; it might be one Dawson, who he said had worked for Carter; or one Cramer, who he said had worked for Carter; or he said it might be one of several salesmen who might have worked for Great Eastern and thus come into possession of a stockholders' list.

I asked him if he knew the first names of either De Hart or Dawson, and he said he did not.

I told him that it appeared to me from correspondence, which I looked at in his office on the occasion of that same interview, that these people had definitely been solicited by some one. He said he was rather inclined to agree with my conclusion drawn from the correspondence, but he had no idea who might be doing it, or what their purpose might be in doing so. He said when he returned from abroad in July, 1937, he met and discussed the Trinidad deal with a man named Arthur Winslow in New York, and apparently Winslow had what he called the remnants of the deal that Carter up to that point had been working on in connection with exchanging or the offering of rights to Great Eastern holders to subscribe to stock and notes of Trinidad International Petroleum Limited.

After looking at the files that were available in Mr. Danziger's office at that time, I told him that there [626] appeared to be some missing, and I

(Testimony of Allen G. Mainland.)

gave him certain names of people that I thought his files should have correspondence from; and he said he would look further and would supply them to me when he had had a chance to look, if he could find them; and among those names was the name of Elizabeth Parsons and W. E. Edwards. And on January 29 I received through the mails this letter accompanied by certain files.

Q. You have handed me a letter on the letter-head of J. M. Danziger, dated January 29, 1941.

A. Yes.

Mr. Lucas: I will now offer it in evidence as the government's exhibit next in order.

The Court: Admitted.

The Clerk: 93.

(The document referred to was marked as Government's Exhibit 93 and was received in evidence.)

Q. By Mr. Lucas: Proceed.

A. I called at Mr. Danziger's office again on February 4, 1941, and asked him to permit me to examine the general books of Wake Development Company——

The Court: I missed that date.

The Witness: February 4, 1941.

A. (Continuing): Mr. Danziger said that the Wake Development Company had no books. He said that aside from its ownership in stock and notes of Trinidad International Petroleum Limited it had no assets to speak of; that its [627] income consisted almost entirely from the proceeds



(Testimony of Allen G. Mainland.)

of sales from T. I. P. securities, plus any attorney's fees which he personally earned, and perhaps some small amount of income on property belonging to Mrs. Danziger.

I told him I wanted to see what books he did have, and he said that he did have a bank account and a check stub book of canceled checks which he thought was none of the Commission's business, but that he did not want to be in the position of claiming personal privilege, so he was inclined to let me, as a Commission investigator, look at whatever I demanded, at the same time stating that he thought it was none of the Commission's business. So he produced a check stub book of Wake Development Company, the earliest date of which was in September, 1940. He produced a batch of canceled checks dating from about September, 1939. He said he could not find the stub book or canceled stubs for any earlier dates. He said, however, that he would look further and would let me know if he succeeded in finding any earlier records.

Mr. Danziger also, on the occasion of this interview, said that in July, 1937, he had made an arrangement with one A. R. Winslow in New York, whereby Wake Development sold stock to A. R. Winslow. He said that after referring to the stock records of the company that this involved 3500 shares, that subsequently—rather, he had received approximately a thousand dollars from Winslow as payment for this [628] stock—it may have been units, rather than stock by itself, I don't recall

(Testimony of Allen G. Mainland.)

exactly at this time—that this thousand dollars was less than Winslow had undertaken to pay for the stock, but that he hadn't received any further payments. Subsequently he said that 400 shares of the 3500 were transferred out of Winslow's name and presumably had been sold by Winslow to someone else. Mr. Danziger said he had received no communications from any of the persons who were calling on holders of Great Eastern, which calls he said may have resulted in these people writing in. Furthermore, he said he had paid no commissions to these persons on behalf of Wake Development Company for disposing of Wake Development Company stock. He said that he suspected that the men who had called—or one of the men who had called on Harold J. McCoy was Carmen, from the description that McCoy had given, but he had no evidence to support this suspicion.

On the occasion of a later interview, he said that one reason he suspected this was that McCoy reported that the man who called on him had rosy cheeks, and that was unusual for a man, and that Mr. Carter when he saw him had quite rosy cheeks, and his description fitted him otherwise. He said he had met Carmen through a man named De Hart, the president of Great Eastern, when he, Mr. Danziger, made his original deal with Great Eastern. He said that the contract which described or set forth this original deal was in the Commission's files. I might say the contract [629] referred to is one that has been introduced here

(Testimony of Allen G. Mainland.)

in connection with the case. I asked him what he meant in correspondence with McCoy by describing someone as the eastern representatives of Wake. He said he had merely used the expression because McCoy had used the expression, and he had nothing special in mind. He said that he had, Wake had no eastern representatives, and that he didn't mean in that letter that they did have an eastern representative.

Again on this occasion I told Mr. Danziger that he hadn't supplied me with all of the correspondence with people who had inquired about Trinidad International Petroleum Limited stock. He said it is quite possible he may have overlooked something, and he would make a further exhaustive search. That is about all I recall we covered in that particular transaction.

Q. By Mr. Lucas: At that time did Mr. Danziger turn over to you some files?

A. I think he did, yes. I should say, generally, at different times he would turn over to me additional correspondence files, and on one or more occasions I examined files in his office and selected correspondence that I wished to take back to my office and examine in more detail, so that some of the correspondence which Mr. Danziger showed me I never took out of his office.

Q. Did you have a later conversation with him?

A. Yes. The next time I talked to him was over the [630] telephone. That time I merely asked him if he had found any older check stub



(Testimony of Allen G. Mainland.)

books of Wake Development Company, and he said he had located a book; and I went to his office later that day and picked it up—rather, as I recall it, he found a vacant office near his on the same floor, and I went in there and made my studies of the book in that office. That stub book went back as far as February 1, 1939.

Q. Now, then, did you have another personal contact with Mr. Danziger after that?

A. Yes, I called on him again on March 18th. At this time I asked him to explain the arrangement he had made in connection with any offer of rights or offer to exchange that Wake Development Company had made to stockholders of Golden Quebec Mines. He said he had made these arrangements verbally with William Carmen. He said there was no signed agreement or written material between himself and Carmen concerning it. And he said at the time the question came up that he had never heard of Golden Quebec Mines himself. He said that Carmen told him he had a list of stockholders of Golden Quebec Mines, and Carmen suggested that he call on these people and offer them rights, or an offer to exchange on some basis.

He said the basis was worked out by Carmen, and he told him it was perfectly all right to Wake Development Company just so they received their minimum price, which was around a dollar a share.

He said that after the first transaction or the first offer in which Carmen worked out the basis, that when anyone wrote in they would reply—by

(Testimony of Allen G. Mainland.)

them I mean Wake Development Company— outlining the basis in a manner consistent with the basis that had been offered in the first transaction as worked out by Carmen. He said he personally didn't remember exactly what the details were of that offer. He said no right certificates were ever printed. He said he never had a list of Golden Quebec Mines stockholders. He said that he wasn't quite clear as to when this arrangement with Carter or Carmen had been made. He said it must have been before he left for Europe, because he knew he hadn't any correspondence with Carmen over it, and he knew he had only seen Carmen once after returning from Europe, which was immediately after he returned in New York, and at that time he was sure he hadn't talked to him about it, so it must have been before he left for Europe, but he indicated that he was somewhat uncertain about just when it had been. He said on the first transaction or two Carmen had shared in the proceeds, but that thereafter he never had, and on any recent sales involving an exchange with holders of Golden Quebec, that neither Carmen nor anyone else had shared with Wake Development Company in the proceeds; that Wake had kept the entire proceeds. He said that Carmen gave him the impression, though he couldn't recall any exact words, that Golden Quebec stock was worthless at the time that the [632] proposition was first discussed. That is about all that we covered in that particular conversation.

(Testimony of Allen G. Mainland.)

Q. All right. Now, then, will you get to the next conversation, if there was one?

A. On March 27, 1941, I telephoned Mr. Danziger and I requested him to permit me to see any correspondence which he or his sister, Mrs. Faulkner, had had with salesmen in connection with sales of T. I. P. securities. On the previous occasion he had undertaken to attempt to locate any of such correspondence that might be in his files. He said over the telephone that he had searched his records, but he found no memos or correspondence with salesmen. He said after his sister's death he had destroyed all the personal papers of his sister, and that that probably would have included any correspondence or memos she had had back and forth with these salesmen.

He also repeated in this conversation that he had had no personal contact with any salesman who might have called upon people in an attempt to interest them to purchase T.I.P. stock or notes.

That was all in that conversation.

Q. Was there a later conversation?

A. I called on him again at his office on April 1, 1941. I told Mr. Danziger that I had received information that William Carmen had jumped his bail in connection with [633] his conviction in Illinois. Mr. Danziger said he was greatly surprised to hear that. He said that the last time he saw Carmen, which was in July of '37, Carmen told him of his conviction and told him that it had gone up on appeal; that he had never heard from Carmen



(Testimony of Allen G. Mainland.)

since. I questioned him further about his deal with A. R. Winslow. He said that Winslow was brought to his hotel room in New York by Carmen a very few days after he arrived back from England in July, 1937. He said that Winslow and he met at his hotel two or three times during that week. He said that an arrangement that he had with Winslow was that Winslow would buy a certain amount of stock at a certain price, which, as he recalled it, was around a dollar a share. He said he understood from Winslow that Winslow intended to resell this stock to the public. He said during that week Winslow actually paid him some money, which was less than the amount agreed upon. He said Winslow also agreed to distribute stock for him, and that during the latter part of '37 and early in '38 Winslow and his men were working on that. He said, however, that he did not pay Winslow anything out of the \$3.00 per unit received by Wake Development Company. He said that if the salesmen that were working with Winslow were compensated, it must have been by Winslow himself, because he didn't do it. He said he had had quite a bit of correspondence with Winslow during that period, but he said that after his sister's death in September, 1939, he had destroyed any [634] correspondence that might have been had with Winslow, so he wasn't able to furnish any of it to me. He said that when Carmen introduced him to Winslow that Carmen told him that Winslow was going to more or less supersede him in the Great East-

(Testimony of Allen G. Mainland.)

ern deal. He said that he was unable to state whether there was any arrangement whereby Winslow was really working for Carmen or Carmen had got out of the picture entirely.

Mr. Danziger said that the original leases which he said were about 200 in number were safely stored in London.

He also said that the original of the contract by which the T.I.P. had acquired an interest in those leases was also in London, and that a copy was in the minute book.

He said that the company did not acquire the leases, but only had entered into a contract with the then owners of the leases.

That was the substance of the statements which Mr. Danziger made to me on the occasion of that interview.

I called on him again on April 14, 1941, and asked him to tell me what he knew about a person named Roberts, who I told him had been reported by a stockholder named Hazelton as having been a person who called on him and originally induced him to purchase securities of T.I.P. Mr. Danziger said he remembered the name Roberts as being that of a stockholder, but he had no recollection of him otherwise. He said he had never heard of him as a salesman, only as a stockholder; that he had never met him, and [635] as far as he knew he had never heard from him. I called his attention to a letter which he had written to Hazelton in which he acknowledged receipt of the stock of Communica-

(Testimony of Allen G. Mainland.)

tions Research Inc. in a sealed envelope, which he said he would keep and turn over to Roberts. And he said he lost all memory of it. He said he may or must have afterwards mailed the papers back to Hazelton, because most emphatically Roberts had never called on him at his office. He said he never had any business dealings with Roberts. In particular, he said Roberts had never handled any business transactions for him in the east.

I asked him to produce some canceled stock certificates, which he did, and there was one for 100 shares of T.I.P., which had been registered in the name of A. L. Roberts, and had been forwarded by Hazelton for re-transfer into Hazelton's name with a stock power attached, presumably endorsed by A. L. Roberts.

I think I told Mr. Danziger, I did tell him either on this occasion or a subsequent occasion that it was my opinion that the handwriting on this stock power was in the handwriting of William Carmen, Carter. He said that it could be. He said he didn't know Carter's handwriting, so it wouldn't mean anything to him whether it was or not.

On this occasion I asked him to turn over to me the stock records, that is, the stock journals and stock ledgers and stock certificate stubs of T.I.P., which he did. I had previously had them and turned them over to him, and on this [636] occasion I asked him to turn them over to me again.

I also asked Mr. Danziger on this occasion about Harry Aronson. He said that he had met Aronson



(Testimony of Allen G. Mainland.)

through an investment banker in New York named Howe. He said apparently that Aronson had been instrumental in bringing the owners of the 200 leases in Trinidad to the attention of Howe, and it was through Howe that he came into contact with the owners of the leases.

He said that Aronson had sold a few blocks of T.I.P. securities and had received commissions on them very early in the deal. He said that in 1935, as he recalled it, Hill had gone to England, that was prior to the time that Mr. Danziger went to England, for the purpose of attempting to raise financing for T.I.P. in England. He said that Aronson had raised some money of his own and had gone along with Mr. Hill to England. He said that Aronson was an uneducated man, he said he was a "Dese and dose" fellow, and he soon tried to keep him away from any contact with the business.

I think he said either when he got to England or even before that Aronson returned and had no further connection with any activities in England.

I also called Mr. Danziger's attention to a letter, an original letter, which I had in my possession, from Wake Development Company to J. Arthur Hazelton, dated in April, 1940, in which it said that 300 units of the profit sharing notes of T.I.P. were being forwarded to J. Arthur Hazelton. [637] That letter is in the government's exhibits as Exhibit 36, and if I may I would like to have it so that I can tell what Mr. Danziger told me about it.

(Testimony of Allen G. Mainland.)

The Court: We will split the morning evenly right now, Mr. Lucas. Ten minutes.

Mr. Lucas: Very well.

(Short recess taken.)

Q. By Mr. Lucas: Before the recess you asked me to provide you with an exhibit, and I did, Mr. Mainland.

A. Yes, this is Exhibit 36. I asked Mr. Danziger to refer to the stock journals and the stock ledger, I should say the note journal and the note ledger, and told him that I had examined them carefully and could not find a record of certificate C-132 for 300 units of preferential profit sharing notes having been issued to J. Arthur Hazelton. Mr. Danziger said that he could not recall the transaction, but that he had been sure that every transfer and every issuance had been issued on the stock and note journals and ledgers. He examined the note record, the note journal and ledger, in my presence, and said that he was unable to offer an explanation unless it was something that his sister had handled. I called his attention to the fact that it was in 1940, which was some months after his sister's death, and then he said he had had no correspondence whatever with Roberts, and he couldn't recall the transaction, and he didn't know why the issuance of that 300 notes had not been [638] made on the note journal.

On May 8 I called again at Mr. Danziger's office. I asked him if I could examine the stock book of Wake Development Company. He said that he no

(Testimony of Allen G. Mainland.)

longer had the stock book of Wake Development Company, because it had been produced as an exhibit in some litigation and had been lost. He said, however, that only one certificate had been issued upon the formation of the company in the early 1920's. He said that certificate for 100 shares was made to his wife. That subsequently the certificate had been assigned to his sister Alda Faulkner and lost along with the stock book. He said after Mrs. Faulkner's death a second certificate replacing the first one had been issued to his wife Edith Wake Danziger. He did not produce this certificate, but he showed me the minute book of Wake Development Company, which showed that on October 12, 1939, a certificate for 100 shares had been issued to Edith Wake Danziger to replace a certificate previously lost.

I asked Mr. Danziger if he had heard of a Mr. Stanley in any way connected with Trinidad International Petroleum Limited. He said there definitely was not anyone named Stanley connected with it; that the only Stanleys he knew were a Stanley Stoneacre and a Stanley Underwood, both of whom had had offices in the same suite in which his offices were located, but that neither of them had any connection with T.I.P. or Wake. [639]

I asked Mr. Danziger who George Carleton was, referring to a telegram to George Carleton, that is, the carbon copy of one which I found in his files, and which I think is attached to the Russell correspondence which I obtained from Mr. Danziger, said



(Testimony of Allen G. Mainland.)

telegram being signed "Mack". Mr. Danziger said that Mack was the name used by his sister in writing back and forth with salesmen. He said that the telegram may have been sent by his sister to George Carleton, and charged to the telephone number of the suite, Mutual 5698; that the telephone then had been registered in the name of Gilbert Stanley Underwood, and that any charges on that telephone bill which were chargeable to him or to Wake or to T.I.P. were settled with Underwood or the bookkeeper who was employed to handle the details of the office. He said he had no knowledge of who George Carleton might be. He said he didn't know whether Carleton was Carmen or whether he wasn't Carmen. He said that his sister may have communicated with salesmen right up to the time of her death, but he said he hadn't communicated with them after her death.

I referred to a letter, carbon copy of a letter in Mr. Danziger's files on which there was in typewriting a short note addressed to "My dear Wilson", evidently over his signature, I told him. He said he may have written a letter on the request of his sister, but he had no knowledge of the circumstances and he didn't know who Wilson might be. He said that he had met a man named Winslow under the [640] circumstances that he had already related to me, in New York. He said he wouldn't recognize him if he saw him again, but that he remembered Winslow as as mall man, as compared to Carmen who was a large man.

(Testimony of Allen G. Mainland.)

I again questioned him about the sales by Wake, and I stated it was my belief that these people had been solicited. I asked him whether he didn't know that, and whether he hadn't paid commissions to the people who were making the calls. He said that at some time in the past, as he had previously stated, he had split proceeds under the original Great Eastern deal, but that at some time along the line he quit doing it. He wasn't sure as to the date, but he said positively that within the previous two years he had split no proceeds; that all received by Wake had been put in Wake's bank account and retained there. He said that as far as he was concerned, and as far as he knew, any sales during the previous two-year period had been unsolicited. He said if Carmen or anyone else was calling on these people he must have some deal of his own; that he didn't know what it was, that they hadn't received anything from him. He said he had halfway expected a claim from some salesman to a portion of the proceeds of these sales, but that none had been received. He expressed the opinion that Carter was afraid to communicate with him for fear that the authorities in Illinois might find his whereabouts and cause his apprehension through Mr. Danziger. He said that as far [641] as he knew Carmen was honest. He said that if he should hear from Carmen he would not tell me where he was, because Carmen had made sales for Wake when Wake needed them badly. During this conversation I told Mr. Danziger that during the course of my investigation I had framed some ques-

(Testimony of Allen G. Mainland.)

tions which I would like to ask him under oath, because I had been unable to satisfy myself on this matter, and I asked him whether he would be willing to testify under oath. He said that the Commission had the power to subpoena him, take his testimony, and he was not inclined to refuse to answer.

I said if he claimed his privilege, that the Commission didn't have the power to compel him to answer. At least, the Commission wouldn't exercise any compulsion on him. And he said that while this investigation was very distasteful to him, that he was not inclined to claim his privilege, and he would testify when I told him that I wanted him to appear.

Q. Was that the last conversation you had with him now before you began taking his testimony under oath?

A. No. I—yes, yes, that was; that was the last conversation before I called him early in June for testimony.

Q. At the conclusion of the testimony of Mr. Danziger taken under oath, which has been read into the record, did you after the date of that last hearing call upon Mr. Danziger for further testimony?

A. Well, before I answer your question, I perhaps [642] should say that subsequent to this sworn testimony that has been read into the record, on June 26th I called at his office, that is June 26, 1941, and returned to him the current check stub book of Wake Development Company, and picked up



(Testimony of Allen G. Mainland.)

from him four checks, canceled checks of Wake Development Company, which I had asked him for and which he had undertaken to supply me during the course of the sworn testimony. Those four checks have been introduced here. I asked Mr. Danziger whether he had found and whether he would be willing to produce the correspondence he had had with Mrs. Parsons during 1940. He said he could produce none of such correspondence, and went on to say that he had been thinking over the matter of the investigation, that he had come to the conclusion that if I requested him to appear for further sworn testimony that he would claim his privilege. He said that the investigation had caused him a great deal of inconvenience, and he figured that he had reached the limit of his co-operation, and he would not answer any more questions under oath.

I asked him if he still claimed he had no business dealings with George Carleton, and whether he still maintained that Aronson had entered the Parsons transactions. He declined to answer these two questions. He said that I had great facilities for investigation at my command, that I had obtained lots of leads from his files, that he had given me records to examine, and that, again, he had [643] reached the limits of his co-operation. That was all on that occasion. I saw him once more, as I recall it, in July when I went to pick up the four checks mentioned. I think I said I picked them up on that previous occasion. I think, as I remember it now, they weren't ready at that time, and when I returned

(Testimony of Allen G. Mainland.)

again on July 22, 1941 I obtained the four checks from Mr. Danziger. I did not ask him any questions, and he didn't tell me anything on that occasion. And that, I think, completes the interviews that I had with him during the period of the investigation.

Q. Now, we will turn briefly for a moment, Mr. Mainland——

Mr. Lucas: May I have Exhibits 62, 3, 4 and 5? I think they are books you may have locked up.

Q. By Mr. Lucas: Mr. Mainland, did you make any analysis and study of the records of the Trinidad International Petroleum notes and stock journals and records supplied you by Danziger?

A. Yes, I did.

Q. Before we get into that, you have been using the abbreviation, I take it, "T.I.P." throughout your testimony here, Mr. Mainland, and do I understand that by the use of "T.I.P." you are abbreviating Trinidad International Petroleum Limited? A. Yes, that is correct.

Q. Just go ahead, Mr. Mainland. [644]

A. There is another stock journal.

Q. I hand you Exhibit 74 and ask you if that is the one you refer to.

A. Yes. And may I have the canceled certificates?

Q. I hand you Exhibit 73, and ask if that is what you want. A. Yes.

Q. Will you relate to us just what examination

(Testimony of Allen G. Mainland.)

you made and what you found therein in those exhibits which have been given you?

Mr. Rose: To which objection is had upon the ground that the exhibits are in evidence and speak for themselves, and it is not a matter of expert testimony.

The Court: He may answer.

A. First, the stock journal of Temporary & B certificates & C certificates, Exhibit 64, shows that the entire capitalization in stock of T.I.P. was issued in July 1933, to Standard Mining Company in eleven certificates, certificates Nos. 1 to 11.

The Court: Will you wait just a moment, please?

The Witness: Yes.

The Court: Go ahead.

A. (Continuing): The entire capitalization of a million shares was issued to Standard Mining Company in the shape of eleven certificates; Certificate No. 1 was for 500,000 shares, and the stock records show that this [645] certificate was afterwards canceled. The certificate itself is in Exhibit 73, and bears the notation "Canceled donated to treasury." Certificates 2, 3, 4, and 5 total 335,000 shares; so I am unable to state how those certificates were divided. Certificates 6, 7, 8, 9, 10, and 11, totaling 165,000 shares were, as I said, originally issued to Standard Mining Company, and thereafter canceled. The certificates were also in Exhibit 73. The journal is not cross referenced, but upon examination of the journals, the ledgers, and the stock certificate stubs, which the latter haven't been



(Testimony of Allen G. Mainland.)

introduced here but are in my brief case, No. 4 in the left-hand brief case.

(A brief case was handed to the witness.)

The Witness: I got the wrong number. Just a minute; hold it.

A. (Continuing): Certificate No. 6, going over each one, one by one, was cancelled, and the certificate bears notation "Canceled May 10, 193 "—with the last digit a dash.

Q. Now, certificate No. 6 that you were speaking of was originally issued to whom?

A. To Standard Mining Company?

Q. Yes.

A. That was re-issued to Alda Faulkner on May 10, 1934, in a certificate for 80,000 shares. The other 15,000 shares was made up of additional shares out of these [646] subsequent certificates, and I will offer them as I get to them.

Certificate No. 7 for 20,000 shares, originally issued to Standard Mining Company, bears the notation on the canceled certificate "Canceled into 298." 298 is the certificate I just mentioned was issued to Alda Faulkner for 80,000 shares, and 15,000 of the shares was taken out on certificate No. 7.

Certificate No. 8 for 20,000 shares bears the notation "Affix stamps and cancel for issue of 6200 by certificates 201-2."

Certificate No. 9 for 20,000 shares bears the notation "Canceled for 299." 299 was issued May 10, 1934, to Wake Development Company for 65,000 shares. The 65,000 shares is made up of 5,000 shares

(Testimony of Allen G. Mainland.)

from certificate 7, 20,000 from certificate 9, 20,000 from certificate 10, and 20,000 from 11.

Certificate No. 10 and 11 both are canceled and in this file Exhibit 73, No. 10 bearing the notation "Canceled into 299" and No. 11 bearing the notation "Canceled into 300." The net result of those transfers is that 165,000 shares transferred out of the original stock issued to Standard Mining Company was re-issued in three certificates: 298 for 80,000 shares to Alda Faulkner; 299 for 65,000 shares to Wake Development Company; and 300 shares also issued May 10, 1934 to H. A. Andrews for 20,000 shares; [647] Certificate No. 300, that is the last 20,000 in the name of H. A. Andrews, is shown by the stock ledger to be still outstanding. The 335,000 shares to Standard Mining Company is also shown to be still outstanding in the original form. Certificate No. 298, that is the 80,000 in the name of Alda Faulkner, was afterwards canceled and re-issued to one C. S. Denson. This certificate is shown by the stock ledger to be still outstanding, but a certificate was issued to replace it with the notation that C. S. Denson had lost the first certificate for 80,000 shares. Certificate 299 for 65,000 shares in the name of Wake Development Company is also in the file of canceled stock certificates. On the face of it there is a notation "Canceled", but no indication of what was reissued in lieu of it. The stock journal also shows the cancellation, but without any cross index to what was issued in lieu of it.

(Testimony of Allen G. Mainland.)

Subsequent issuances of stock where I could trace them were issued out of certificate 271.

Q. By Mr. Lucas: In whose name did 271 stand?

A. 271 is one of several certificates reissued for 20,000 each, in place—I shouldn't say for 20,000 each, 271 was one of a series of certificates, 267, 268, and 269 and 270 for 5,000 each, and 271 for 20,000, all issued to replace certificate No. 299, being the 65,000 shares in the name of Wake Development Company.

Q. Now, you mentioned a moment ago, Mr. Mainland, that we had not introduced those stubs, I believe you said. [648]

A. Yes.

Mr. Lucas: At this time we offer in evidence as one exhibit the envelope containing the stubs of certificates——

Mr. Rose: There isn't any objection to the offer. I take it these are the things he is testifying about?

Mr. Lucas: Yes.

Mr. Rose: Let them go in, there is no objection.

Mr. Lucas: Mr. Mainland said for the purpose of his further testimony he is temporarily holding out, and it should be a part of that exhibit, four or five more stubs. Will you consider that?

Mr. Rose: We will consent, when Mr. Mainland finishes whatever he has to tell us about that portion of this, that it may be inserted here and become a part of this exhibit.

The Court: Admitted.

The Clerk: 94.

(The document referred to was marked as



(Testimony of Allen G. Mainland.)

Government's Exhibit 94, and was received in evidence.)

The Witness: That certificate No. 271, out of which subsequent transfers were made, is attached to an exhibit which has already been introduced in this case as, I think, Exhibit 66.

Q. By Mr. Lucas: Exhibit 66 is, according to my information, a cardboard containing a 20,000 shares certificate and a typed page of figures; is that what you are speaking of? [649]

A. That is correct. In the course of my examination of this stock record I examined the stubs of the certificates, the ledgers and the journals, for the addresses of the stockholders of T.I.P. I found, aside from Standard Mining Company, five stockholders with holdings of 510 shares in the aggregate who had addresses in England. All of the rest of the addresses contained in the stock records either are missing or are addresses in the United States. The stock certificates covering the holdings of the five persons I mentioned are here, and the latest date on any of them is January 15, 1936. One of the stubs bears a date later in '36, but it is for the re-issuance of a certificate that evidently had been recorded as lost and had been issued earlier than that.

That is all I had in mind concerning the stock records.

Mr. Lucas: You may cross examine, counsel.

You suggested that there are some exhibits heretofore marked for identification that you would like

(Testimony of Allen G. Mainland.)

to have in evidence. I have in my notes, Mr. Rose, Exhibit 77, being the articles and minutes of T.I.P., marked for identification.

Q. By Mr. Lucas: You examined them in the course of your investigation, did you, Mr. Mainland?

A. I am sorry I didn't hear you.

Q. The articles and minutes of Trinidad International. A. Yes, I did examine them. [650]

Mr. Rose: They are in evidence. You have ventured that a number of times during the course of these proceedings. I call your attention to the fact that on January 18 they were admitted in evidence as Exhibit 77.

Mr. Lucas: Thank you, Mr. Rose. I had just failed, then, to get them properly marked here. I wanted to ask you now if there is anything marked for identification that you would like to have in evidence.

Mr. Rose: Well, I will do that on my time. I won't keep the Court waiting until I made up my mind on that to check it.

Mr. Lucas: Then the witness is yours for cross examination.

The Court: You will begin after lunch. It is five minutes to 12:00. I will ask you gentlemen to come back at a quarter of 2:00. Unfortunately I must leave for another court matter at 4:15, but I would like to start at a quarter of 2:00.

Mr. Lucas: Very well, your Honor.

(Whereupon, at 11:55 o'clock a.m., a recess was taken until 1:45 o'clock p.m.) [651]

Los Angeles, California

Tuesday, January 23, 1945, 1:45 p.m.

Mr. Rose: Shall I proceed, your Honor?

The Court: Yes.

ALLEN G. MAINLAND

resumed the stand on behalf of the government and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Rose:

Q. Mr. Mainland, in giving your testimony this morning in respect to the several conversations that you recited as having had with Mr. Danziger, you haven't related all of the conversations at said occasions, have you? A. No, I haven't.

Q. Now, you stated that after you had taken those several sworn statements from Danziger that you called on him again and that he told you that he had been roused around, in fact, enough and he was finished co-operating, is that correct?

A. Yes.

Q. Wasn't this statement on his part preceded by a declaration made to you that the S.E.C. had investigated all of this business way back in 1934, 1935, 1936, 1937 and 1938?

A. I will answer first by saying no, then saying that Mr. Danziger did tell me, and I knew, that there had [652] been a previous investigation by the Commission, which had never been completed. As



(Testimony of Allen G. Mainland.)

a matter of fact, I was named an officer of the Commission to complete an investigation which had been begun some time previously by other personnel of the Commission.

Mr. Rose: I move his answer be stricken, your Honor, as not responsive. This is cross examination, and I asked him about a statement; I didn't ask him about his opinion. If your Honor will advert to my original question, you will observe that I asked him whether a certain statement was not made.

The Court: The answer may stand. Motion is denied.

Q. By Mr. Rose: Didn't he tell you that the S.E.C. had fully investigated the modus operandi of this form of stock sale and had O.K.'d it?

A. No, he did not.

Q. Did he tell you that they had failed to admonish Wake Development Company to not carry on in the same manner?

A. Quite the contrary.

Q. Didn't you tell him that you didn't care what the others had done so far as you were concerned, you were going through with this?

A. I did tell him that; I told him that——

Q. Mr. Mainland, can you answer my question?

A. I could if it fit the facts, but I have to answer the question. [653]

Q. You feel you want to assist in the trial of this case, is that it?

(Testimony of Allen G. Mainland.)

A. No, but I must give the answer that—not in your own words, I must give them in my own.

Q. In substance or in effect did he say that?

A. Would you mind reading the question, please?

(The following question was read: “Didn’t you tell him that you didn’t care what the others had done so far as you were concerned, you were going through with this?”)

The Witness: I recall exactly what I said to him. I said there may have been a board of investigations by the Commission, this time I was either going to see that the case was closed or that some affirmative action would be taken.

Q. You say you had inspected the investigations previously made?

A. You say did I tell Mr. Danziger that?

Mr. Rose: Read the question to the witness, please.

(The question was read.)

The Witness: I didn’t say so, but I had.

Q. By Mr. Rose: You ascertained, did you not, that in 1936 the S.E.C. had made inquiry into the business of issuing rights to the Great Eastern stockholders? A. The Commission had, yes.

Q. They had that information before them in the early part of 1936? A. I think so. [654]

Q. They had before them, did they not, the fact that these Great Eastern stockholders would send

(Testimony of Allen G. Mainland.)

in a request to exercise such rights to the Wake Development Company?

A. They did either in '36 or early in '37, I couldn't say exactly.

Q. All right. They had before them the fact that the stock was being sold at various prices below \$5.00 in that manner? A. Yes.

Q. That an allowance was being made for the so-called shares in the Great Eastern Gas Company?

A. Yes.

Q. Or in mining companies that were more or less defunct?

A. No, they didn't have that before them.

Q. Are you certain of that?

A. I am positive.

Q. In 1937?

A. I am positive. They had——

Q. What is that?

A. I was going to volunteer——

Q. Go ahead.

A. They had before them the fact that rights had been offered to All Americas Petroleum, South-American Oil Fields, and Great Eastern Natural Gas. [655]

Q. All companies that were more or less defunct?

A. I now believe they were. I don't know whether the Commission knew so at the time.

Q. And a certain allowance was made for their so-called defunct stock? A. Yes.

Q. Now, Mr. Danziger told you that that matter had been fully inquired into and that proceeding



(Testimony of Allen G. Mainland.)

had been fully inquired into several times before your visit to him?

A. He may have said he thought so, but I knew that the results were.

Q. I didn't ask you that.

Mr. Rose: I move that the answer be stricken, your Honor, as not responsive.

The Court: Motion denied.

Q. By Mr. Rose: Can you answer the question whether that was or was not said in substance or in effect?

Mr. Rose: Read the question to the witness, please.

A. Mr. Danziger told me——

Q. Just a moment. I want you to have the question exactly in mind.

A. I know what the question is.

The Court: Answer the question.

The Witness: Mr. Danziger told me that he had been investigated. I don't recall that he said he had been fully investigated. [656]

Q. Didn't he say that the mode of doing business of the sale of Wake Development Company's holdings of Trinidad stock had been investigated as to the manner that I have previously outlined to you, namely, an allowance for shares in a defunct company, the exercise of the so-called rights and the letters going into the Wake asking for permission to exercise the rights and so forth?

A. I don't think Mr. Danziger went into what phases of it he thought had been investigated. He

(Testimony of Allen G. Mainland.)

said he had been investigated; he named the men who had investigated it.

Q. Mr. Mainland, can't you answer the question that I have just propounded to you?

A. I think I have.

Q. Will you please answer that question whether that did or did not take place?

Mr. Rose: Will you re-read the question to the witness, please?

(The following question was read: "Didn't he say that the mode of doing business of the sale of Wake Development Company's holdings of Trinidad stock had been investigated as to the manner that I have previously outlined to you, namely, an allowance for shares in a defunct company, the exercise of the so-called rights and the letters going into the Wake asking for permission to exercise the rights and so forth?")

The Witness: I don't recall Mr. Danziger saying so; [657] but I do know that the Commission had that information.

Q. Very well. Didn't Mr. Danziger say if there was anything wrong with the manner in which Wake Development Company had been carrying on its business in respect to the sale of its shares of stock, why didn't the Securities and Exchange Commission take any action pursuant to Section 20 of the Act?

A. Mr. Danziger didn't say that to me.

(Testimony of Allen G. Mainland.)

Q. Did he tell you that they had never served a stop order on the Wake Company?

A. No, he didn't say so.

Q. Didn't he mention that he had never been told that there was anything improper in that method of operation?

A. No, he did not. He had been told there was.

Q. Who told him, you? A. Mr. Freeman.

Q. Were you present? A. No, I was not.

Mr. Rose: Move that his answer be stricken as a conclusion of the witness and not responsive to the question.

Mr. Lucas: I think it is very responsive. He asked him who told him.

Mr. Rose: I am not speaking of that phase. I wanted to clear it up so I could establish, as a matter of law, that his answer is not responsive to my question, is voluntary, and hearsay and a conclusion of the witness. [658]

The Court: Is that based on hearsay or something Danziger told you?

The Witness: It was based on evidence that the Commission adduced in a previous investigation.

The Court: Based on Commission files?

The Witness: Yes.

The Court: That is where you got the information?

The Witness: Yes.

Q. By Mr. Rose: Have you got any document to that effect?

A. Yes.



(Testimony of Allen G. Mainland.)

Q. Any document that was ever transmitted to the Wake Development Company prior to your conversations with Danziger where the Securities and Exchange Commission told the Wake Development Company to desist from the sale of that stock?

A. I have photostats.

Q. Have you got any letter to that effect that was ever transmitted to Mr. Danziger or the Wake Development Company?

A. I have a photostat of a wire from Mr. Danziger to his sister telling her——

Q. Mr. Mainland, you have been in court frequently, and I take it from matters that have been related here you are somewhat familiar with the rules of evidence.

The Court: Finish the answer. What were you going to say? [659]

The Witness: Photostat of a wire from Mr. Danziger to his sister from London telling her to disregard the advice of Mr. Freeman of the Commission and to continue her business with Carmen.

Mr. Rose: I move that answer be stricken as hearsay, no proper foundation laid, voluntary, endeavored to be prejudicial, and not responsive to the question.

The Court: You brought it out. Motion denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

Mr. Rose: If your Honor will permit it, I would like to have the question read so I can determine

(Testimony of Allen G. Mainland.)

whether I did develop this thing here. Will your Honor permit it?

The Court: Yes.

Mr. Rose: Will you read the question I asked the witness?

(The following question was read: "Have you got any letter to that effect that was ever transmitted to Mr. Danziger or the Wake Development Company?")

Q. By Mr. Rose: You are familiar with Section 20 of the Act?

A. I can't say that I am.

Q. Well, take a look at it.

A. After reading the Act I think I am fairly familiar with that. [660]

Q. Wasn't this section discussed between you and Mr. Danziger?

A. I wouldn't say that it wasn't. I don't recall ever discussing it with him, but I wouldn't want to be too positive about it. It may have been.

Q. He told you that no injunction had ever been applied for or issued?

A. He may have. I knew there hadn't been.

Mr. Rose: I am not altogether certain, your Honor, of whether the Court takes judicial notice of respective sections of this Securities Act.

The Court: Yes, all Federal statutes.

Mr. Rose: That is, the Court does take judicial notice of it?

The Court: Yes.

Q. By Mr. Rose: Can you answer this without

(Testimony of Allen G. Mainland.)

—that is, answer it directly? Are you in possession or do your files have within it a letter directed to the Wake Development Company telling the Wake Development Company that this practice is improper? Will you answer that yes or no?

A. Read the question, please.

(The question was read.)

The Witness: I have not.

Q. By Mr. Rose: In the file there was a registration record of the consideration of the properties of the Trinidad Company, is that correct? [661]

A. I don't quite follow you. What do you mean by consideration for properties?

Q. Well a prospectus as provided for in the Act had been approved by the Securities and Exchange Commission, had it not? A. No.

Q. What is that?

A. No. There had been a registration statement filed with the Commission in 1934. It became——

Q. Was there a copy——

Mr. Lucas: I ask that the witness be given the privilege of completing his answer before he is interrupted.

The Court: He will. Try again, Mr. Rose.

Q. By Mr. Rose: Did you find a form of prospectus of the Trinidad International Petroleum Company within the file and in the possession of the S.E.C.?

A. I did.

Q. May we have it, please?

The Witness: No. 97.



(Testimony of Allen G. Mainland.)

Mr. Lucas: That doesn't mean anything to me.

(Witness leaves the witness stand.)

Mr. Rose: Mr. Mainland, in the interest of expediting this, while you are down here now, will you please extract from the records, first, the record of the proceedings had culminating in the registration of the T.I.P. stock, the prospectus, and all of this communication between the State [662] Department and the British Departments in respect to the T.I.P. stock concerning which you made some comment in your direct examination?

The Court: One or more of the counts are sales of securities in violation of the registration provisions of the Act?

Mr. Lucas: Yes.

The Court: You haven't proven that, have you?

Mr. Lucas: Yes, we think the exhibits already in evidence prove that. It is merely a matter of law.

The Court: What have you proven about non-registration?

Mr. Lucas: They must come within the exemption, your Honor. They didn't register. Mr. Mainland testified that they were not registered, and the certificates are in evidence.

Mr. Rose: That is not correct, your Honor. As a matter of fact——

The Court: Let me finish, please.

Mr. Rose: Excuse me, please.

The Court: I haven't finished asking my questions. Mr. Lucas, you better look up here, we will

(Testimony of Allen G. Mainland.)

get along better. When did Mr. Mainland testify—this morning?—that the stock was not registered?

Mr. Lucas: Yes.

The Witness: It was last Thursday, your Honor.

The Court: Not this morning he didn't. [663]

Mr. Lucas: He testified when he first went on the stand as to the introduction of these two exhibits here, that they were not registered and these two exhibits were offered in evidence. The testimony went in at the time these exhibits were introduced, your Honor.

The Court: Clerk, hand those to me.

Mr. Rose: On the contrary, your Honor, the exhibit there shows there was a registration. There was no registration of Wake Development Company.

The Court: You might tell me a little more of the government's theory.

Mr. Lucas: The Wake Company, if the Court please, is a defendant in this case, and the counts referring to registration are counts 8, 9, 10 and 11, and it is the contention of the government that those counts are particularly applicable to both Mr. Danziger and the Wake Development Company.

The Court: Was the Trinidad stock registered?

Mr. Lucas: To the extent as shown here only.

The Court: What do you mean by that?

Mr. Lucas: This recites that a registration statement was filed with the Federal Trade Commission May 9, 1934, by Trinidad. And this other one—I read just now from Exhibit 78; and the other one—

(Testimony of Allen G. Mainland.)

The Court: Don't read the other one. What more, under the government's theory, should they have done to——

Mr. Lucas: Because of the offer in 1934 under the [664] Securities Act, the law was that they didn't have to register except for sales of securities in excess of a certain sum, and here we expect to show by an analysis of all this testimony that a public offering was made of far in excess of that amount, and that it wasn't properly registered; and, further, if the registration as made doesn't comply with the law, it is up to them to defend that they came in on the grounds of one of the exemptions.

If the Court please, the law, simply stated, is anybody that offers a security for sale must have the registration statement on file covering the detail of that entire thing.

The Court: Was that filed for Trinidad?

Mr. Lucas: This Exhibit 78 recites that this registration statement was filed with the Commission May 9, 1934, by Trinidad International Petroleum, Limited, pursuant to the provisions of the Securities Act, under a certain file number.

It further certifies that the books and records of this Commission do not disclose that any filing other than the above has ever been made with the Commission under the name of the Trinidad International Petroleum, Limited, pursuant to the provisions of the Securities Act of 1933 as amended.

Now, it may be—and I would have to take a little time out to answer your Honor—this was fully ef-



(Testimony of Allen G. Mainland.)

fective up in '38, '39 and '40, when the operations covered by the testimony here were under consideration. [665]

The Court: You know what the government's theory is about it. You didn't have any opening statements in the case. I didn't make any statements about it, and counsel apparently hasn't. The time has come now when I need to understand the alleged non-registration. Did that registration expire by limitation, or was it defective, or what was it?

Mr. Lucas: That I can't answer now. If you give me a little time I can answer it in the morning.

The Court: You better consult with Mr. Mainland——

The Witness: I shall be glad to testify.

The Court: You better talk with counsel. This testimony is meaningless unless the government's theory is fully developed.

Mr. Lucas: Will you step down, Mr. Mainland, please?

Your Honor, the theory of the government is this: that the registration statement now on file, certificate of which is on file, applies to 100,000 shares of Wake stock——

Mr. Rose: Wake stock?

Mr. Lucas: Trinidad stock, that was never sold; and that there is no registration statement on file for the 165,000 shares of Trinidad stock sold by Wake. That the evidence all going in now has reference to the stock sold by Wake for which there

(Testimony of Allen G. Mainland.)

was no registration on file whatever, and these certificates that are being talked about as being filed with S.E.C. applies to a totally different stock issue. [666]

The Court: Continue, Mr. Rose.

Q. By Mr. Rose: The practice, of course, of the S.E.C. as you have known it at all times was after a registration the prospectus is submitted and the prospectus is either approved or disapproved, is that correct?

A. No, that is not correct.

Q. Isn't there a provision in——

A. On the face of——

Q. ——Section 10 respecting a prospectus?

A. Yes, there is, a prospectus is necessary to be filed. On the face of each prospectus is a required statement that the Commission has not approved the issue or—the wording is standard, I can't recall it.

Q. That it doesn't recommend it, but it has satisfactorily passed on the matters set forth, considered and passed on whether there are any mis-statements in the prospectus; isn't that correct?

A. No, that isn't correct; but I don't know that I am qualified to comment on it.

Q. Let's have the prospectus you found in your files, please.

A. This is a photostatic copy of the prospectus which was filed with the original registration.

Mr. Rose: At this time, your Honor, on behalf of all three defendants, two corporate defendants and defendant J. M. Danziger, I offer as our ex-

(Testimony of Allen G. Mainland.)

hibit the prospectus identified as having been lodged with the Federal Trade Commission, securities Division, on May 9, 1934.

The Court: It may be admitted.

The Clerk: Defendants' A.

(The document referred to was marked as Defendants' Exhibit A, and was received in evidence.)

Q. By Mr. Rose: Your files reflected, did they not, that the Securities and Exchange Commission had authorized the sale of Trinidad stock at \$5.00 per share?

A. Yes, it had authorized the sale of treasury stock of Trinidad International Petroleum Limited.

Q. In other words, they investigated what Trinidad assertedly possessed and had to offer and authorized the sale of shares of Trinidad stock at \$5.00 per share; isn't that correct?

A. They had not investigated it. They had authorized the filing to become effective. The responsibility was on the filer for any statements made in it.

Q. You told us the first time you saw Danziger he furnished you with Cunningham Craig's, a British eminent geologist, report on the oil properties in Trinidad, did he not? A. He did.

Q. Did you ever inform Mr. Danziger in any of these conversations that any of the statements or declarations in [668] that geological report were untrue? A. No, I did not.

Q. Did your files reflect that any geologist had



(Testimony of Allen G. Mainland.)

reported otherwise than this British geologist Craig? A. No.

Q. You had no such information?

A. No, I didn't.

Q. Did you in the course of your investigation ascertain whether or not there were two wells on these properties that had gone down to a certain depth? A. No, I did not.

Q. Did your files indicate in any manner or form that there were no such two wells?

A. No, they did not.

Q. In the course of your investigation did you establish or ascertain whether the properties over which the Trinidad Company had certain oil rights in fact had oil on it? A. I made an effort.

Q. Did you ascertain that there was no oil visible? A. No, I did not.

Q. Did you ascertain in the course of your investigation that sums in excess of a quarter of a million dollars had been expended in connection with those rights?

A. I didn't ascertain whether they had or had not.

Q. In other words, you don't know whether it had or had not? [669]

A. No. Mr. Danziger told me that he understood that a great deal larger sum than that had been spent on some phase of the——

Q. He told you there had been a sum expended probably in excess of a half million dollars, didn't he?

A. I think he did.

(Testimony of Allen G. Mainland.)

Q. Did you ever ascertain that that was not a fact?

A. I think my only information came from Mr. Danziger on that.

Q. Mr. Mainland, why don't you answer my question? This is a very dangerous form of examination; I am opening the door as wide as the Grand Canyon, and I rely on your integrity, and I am giving you a chance to tell us, if you did ascertain whether that statement was false or untrue I am giving you an opportunity to tell us that you did.

A. I did not ascertain what, if any, sums had been spent in a prior development.

Q. Mr. Danziger told you, did he not, in the course of some of these conversations that he had actually succeeded in England in raising, in getting a commitment for money to begin operations?

A. He said he had a tentative commitment.

Q. And didn't he tell you that it was because of your activities—by “your” I mean the S.E.C., I don't mean you personally—that it was because of your [670] activities that that deal had been ruined?

A. I hesitate to tell you what he actually told me. I am afraid you will consider it prejudicial.

Q. Can't you answer my question?

A. He didn't tell me what you say he told me.

Q. Well, then your answer is he didn't say that?

A. No.

Q. All right. In the course of your investigation you ascertained that Mr. Danziger had spent over two years in England on this enterprise?

(Testimony of Allen G. Mainland.)

A. Yes.

Q. And that he had spent his own funds in connection with all of that activity?

A. I don't know that.

Q. You don't know of anybody that gave him any money to carry on over in England?

A. I don't know of anyone who gave him any, no; I——

Q. You have gone over the books, haven't you?

A. I have gone over the material that was furnished to me.

Q. You found in the course of your investigation and in the discussion with Mr. Danziger, that there had been numerous communications between British departments involving proposed business, and the State Department at Washington, and so forth, didn't you?

A. Yes, there had been. [671]

Q. And you had such papers in your files and in your possession?

A. Yes, Mr. Danziger gave them to me.

Q. Have you got them with you?

A. Yes, I have.

Q. Haven't you the originals, Mr. Mainland?

A. Yes, I have. There is another file. The file of papers I found—rather, that was in a folder marked Colonial Office, Mr. Danziger gave me. There is another file in a folder entitled "Registration Great Britain".

Q. Mr. Mainland, if you don't mind, let's take these one at a time.

A. Surely.

(Testimony of Allen G. Mainland.)

Q. Because the record will reflect some particular group of papers.

I call your attention to a group of papers that purports to reflect communications between J. M. Danziger and the Under Secretary of State, Colonial Office, in London, and from that office to him, and the Department of State at Washington, and the Chairman of the Trinidad International; in the course of your investigation you found, did you not, that these communications had, in fact, been had between the parties reflected therein?

A. No. I accepted that file as being what it purported to be. I made no investigation with the State Department or the Colonial Office. [672]

Q. Let's put it this way, if we may: You were satisfied that the communications reflected in this file were, in fact, had?

A. I was satisfied, yes.

Mr. Rose: I offer these as our exhibit, your Honor, in behalf of all defendants.

The Court: They are admitted.

The Clerk: B.

(The document referred to were marked as Defendants' Exhibit B, and were received in evidence.)

Q. By Mr. Rose: You have handed me a group of papers that were turned over to you in the course of your investigation, between the Department of State at Washington and Danziger and the Trinidad International; does the same hold true as to this group of papers?      A. It does.



(Testimony of Allen G. Mainland.)

Mr. Rose: I offer these as next in order, your Honor, on behalf of all defendants.

The Court: They are admitted.

The Clerk: C.

(The documents referred to were marked as Defendants' Exhibit C, and were received in evidence.) [673]

Q. By Mr. Rose: There are some more you commenced to tell us about.

(Witness hands counsel some papers.)

A. I think that is all.

Q. You have handed me some documents from the Companies' Registration Office in England, and Mr. Danziger, the Trinidad Company; does the same apply to this?      A. It does.

Mr. Rose: I offer these as next in order.

The Court: They are admitted.

The Clerk: D.

(The documents referred to were marked as Defendants' Exhibit D, and were received in evidence.)

Q. By Mr. Rose: When Danziger told you that he had been over to finance the commencement of operations of the Trinidad Company in England, did you make any endeavor to ascertain whether he had been over for that purpose?

A. No; I accepted his statement that he had.

Q. If my memory serves me, in the course of your inquiry of Mr. Danziger, you discussed with him a Dr. Paddleford.      A. Yes, I did.

(Testimony of Allen G. Mainland.)

Q. Incidentally, did you, Mr. Mainland, inform Mr. Danziger that somebody had assertedly signed the letter with the name of Dr. Paddleford?

A. I don't recall whether I informed him of that or not. I questioned him as to the material contained in a [674] letter, and I asked him about Dr. Paddleford; but whether I told him there was a letter signed by Dr. Paddleford, I don't recall.

Q. Well, you know that you never told him that somebody, ostensibly, had forged the name of Paddleford to a letter, you never told him that at all, did you?

A. If I did it was an inadvertance, I didn't intend to.

Q. In other words, you didn't intend to tell him.

A. No, I did not.

Q. But you were questioning him about Paddleford in the text of some alleged communication by one Paddleford, without disclosing to him that there was, purportedly, in existence any such communication.

A. That exactly states the facts.

Q. You had no idea of what Mr. Danziger would have done had you told him that you suspected that somebody had written a letter to that effect?

A. No, I had no idea.

Q. In the course of this testimony there has been some mention made about New Mexican oil leases; do you recall that? A. Yes.

Q. Do your records reflect or do they not reflect that there was a registration had in the S. E. C.

(Testimony of Allen G. Mainland.)

showing a lease on 20,000 acres of oil lands in the State of New [675] Mexico, with a State geologist's report on the same?

A. I don't like to say our records don't reflect it, because they may; but I have no knowledge of any such thing myself.

Q. Have you got the file with you here?

A. I have not the file of the Commission, no.

Q. Well, haven't you in your possession or among your papers in your custody the State geologist's of New Mexico report on the 20,000 acres over which the Trinidad Company had a lease?

A. It was my understanding that they did not have a lease.

Q. Would you say that there wasn't a lease of that kind filed with your office?

A. No, I told you I couldn't say. I know of none; but there may be. I haven't seen all of the Commission's files.

Q. Well, have you just assumed, have you, Mr. Mainland, that there wasn't a lease on 20,000 acres in New Mexico?

A. No, I haven't assumed it.

Q. By the way, did you ever read that prospectus?      A. No.

Q. Well, doesn't the prospectus refer to this 20,000 acre lease in New Mexico?

A. I think it may refer to an option on one. It is my recollection that Mr. Danziger told me that the [676] T. I. P. never acquired the lease; that it had an option, and that it never exercised it. And my own investigation confirmed that.

(Testimony of Allen G. Mainland.)

Q. Have you in your possession a copy of that option?

A. I have several papers on it in my file.

Q. Will you produce them, please?

A. I think I can if I may take the time.

Q. Or would you prefer to do it during the recess?  
A. At recess would be better.

Q. We will see if we can't make a little time. Now, your files reflect, do they not, that the original leases had been transmitted from London to the S. E. C. office here, and then returned to London, on the 200 parcels involved in the Trinidad deal?

A. My examination of the files that were available to me does show that the originals were in Los Angeles and were transmitted to London.

Q. In other words, they were sent to the S. E. C. at their request from London, and then returned to London; that is what your file reflects, does it not?

A. It doesn't reflect exactly that. I will be glad to tell you what it does reflect.

Q. Go ahead, Mr. Mainland. I have never seen your files; I am asking you about it.

A. To the best of my recollection, our files reflect [677] that the Los Angeles office, that is, Mrs. Faulkner, was asked by the Commission to produce the original leases at the time Mr. Danziger was in London. And whether they were transmitted from London or not, I don't know. They were produced for a few days in Los Angeles, and Mrs. Faulkner was requested to retain them here, but



(Testimony of Allen G. Mainland.)

Mr. Danziger advised her he needed them in London and she returned them to him.

Q. In any event, they went back to London.

A. Yes.

Q. Have you the file of the first so-called investigation? A. No, I do not.

Q. Incidentally, you have furnished me with the 1939 Wake Development income tax certified records? A. Yes, that is a certified copy.

Mr. Rose: I offer that, your Honor—part of it is already in evidence—as our next exhibit.

The Court: Admitted.

The Clerk: E.

(The document referred to was marked as Defendants' Exhibit E, and was received in evidence.)

Q. By Mr. Rose: Did you in the course of your investigation interview this man De Hart who was at the head of this gas company?

A. I had him interviewed. I didn't interview him personally. [678]

Q. You found that there was such a man?

A. Yes, yes there was; he was in Bridgeport, Connecticut.

Q. And you found that he was one of the signatories to this agreement, which, with some omissions is in evidence as 82?

A. I think he said he was.

Q. That is, he was the signatory and the president of that company? A. Yes.

Q. Incidentally, were you the person that ap-

(Testimony of Allen G. Mainland.)

peared before the Grand Jury antecedent to the filing of this indictment.

A. I was one of the witnesses.

Q. What is that?

A. I was one of the witnesses.

Q. Were any of the persons that were produced here brought before the Grand Jury?

A. I recall that Miss Skinner was.

Q. I can't hear you.

A. I recall that Miss Skinner was.

Q. That was the only one?

A. So far as I know.

Q. Am I correct that the only persons appearing before the Grand Jury were Miss Skinner and yourself?

Mr. Lucas: To which we object on the ground it is [679] outside the scope of the direct examination of the witness, and what occurred before the Grand Jury is a matter of secrecy and cannot be inquired into by the defendant.

The Court: You don't know who appeared before the Grand Jury, do you?

The Witness: I know, your Honor.

The Court: You weren't there all the time, were you?

The Witness: No, I was outside and I watched them go in.

Q. By Mr. Rose: In other words, you were in attendance while the presentation was being made?

A. I was not present in the Grand Jury room.

Q. But outside?           A. Yes.

(Testimony of Allen G. Mainland.)

Q. You marshaled the witness to appear?

A. Yes.

Q. And you know who they are? A. Yes.

Q. And they were yourself and Miss Skinner?

A. Yes.

Q. And that is all? A. As far as I know.

The Court: The District Attorney usually testifies a little, too.

Mr. Rose: I have always thought so, your Honor, but it never appears in the record. [680]

Incidentally, your Honor, I want to clear up a point. I haven't any quarrel with it, and I probably did. Your Honor indicated I opened the door for some statement that he made. I would like your Honor, if you see fit, to let us—we haven't any objection, your Honor, in fact, I would like to offer the entire investigation file of so-called early investigations, if your Honor would deem it competent.

The Court: No.

Mr. Rose: I have questioned whether the court would permit it, but I make an offer, your Honor, in view of the statement of this witness, I make an offer to present to your Honor as the record evidence in this case, the entire investigation file of the S. E. C.

The Court: Any objection?

Mr. Lucas: Your Honor, I first want to ask counsel: Do you have that in your possession here so it can be examined?

Mr. Rose: How can I possibly have it in my

(Testimony of Allen G. Mainland.)

possession? It is in the possession of the Securities and Exchange Commission.

Mr. Lucas: Is it under subpoena so we can produce it and identify it?

Mr. Rose: I don't think we have the power to subpoena that record.

Mr. Lucas: Have you served any previous request on me or the Commission to produce it? [681]

Mr. Rose: No, I don't make it a practice to ask for a subpoena duces tecum unless I can describe the document. I don't think the subpoena would be any good on any description I can present.

Mr. Lucas: I don't want to be in the position of depriving counsel for the defendant or the defendants themselves of anything that they deem proper to introduce in evidence in their defense of this case, and I want to say that if they will identify for me or for Mr. Mainland anything that they deem necessary for their defense, that we will try to produce it for them; but this shot gun offer of the entire file of the investigation, I don't quite understand that kind of an offer.

The Court: You don't need to understand it; I have rejected it.

Mr. Rose: Are you objecting to the offer?

Mr. Lucas: I made my statement, Mr. Rose.

Mr. Rose: What is the ruling of the court?

The Court: I rejected the offer.

Mr. Rose: Very well. May we take a few minutes recess? I don't think I will be more than an-



(Testimony of Allen G. Mainland.)

other minute, if at all, with this witness, your Honor.

The Court: You will have another witness?

Mr. Lucas: Yes. I have my expert to call next. It will take some time, however.

The Court: And you will start in with your closing [682] witness, also, then?

Mr. Lucas: Probably, your Honor.

The Court: We will take 10 minutes.

(Short recess was taken.)

Q. By Mr. Rose: Mr. Mainland, you have been good enough to hand me a group of papers, and I haven't had a chance to examine them; may I ask you whether these papers are papers that were in the possession of the S. E. C.? A. Yes.

Q. And these forms of agreement, that is, operating agreement and other papers, relate to the T. I. P. New Mexico proposed deal?

A. To the best of my knowledge they do. They were in the files, having been obtained, I understood, from Mr. Danziger or his office at some time prior to the time I was assigned to this matter.

Mr. Rose: May they all be received, your Honor, as one exhibit?

The Court: Admitted.

The Clerk: F.

(The document referred to were marked as Defendants' Exhibit F, and received in evidence.)

(Testimony of Allen G. Mainland.)

Mr. Rose: I think that will be all, your Honor.

Mr. Lucas: That is all, Mr. Mainland.

(Witness excused.)

Mr. Lucas: Call Mr. Conway. [683]

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JAMES V. P. CONWAY,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: James V. P. Conway.

Direct Examination

By Mr. Lucas:

Q. What is your occupation, Mr. Conway?

A. I am a Post Office inspector and examiner of questioned documents.

Q. How long have you been such?

A. I have been a Post Office inspector about three years, and examiner of questioned documents about five years.

Q. Describe the duties of your assignment with the Post Office Department.

A. I am assigned exclusively to the analysis of questioned documents which arise in cases of the Post Office [684] Department—

Mr. Rose: Excuse me. In the interests of time, I say to you very frankly that I note nothing to

(Testimony of James V. P. Conway.)

the contrary, that this man is not an expert in the field that he is—it may be handwriting—and I will stipulate to his qualifications to express an expert opinion in that regard, your Honor.

Mr. Lucas: I am satisfied with the stipulation if the court is.

The Court: Yes.

Mr. Rose: We can save that much time.

Mr. Lucas: In the interests of further saving of time, I will ask you if you care to stipulate concerning these exhibits which I now show you. I can run through them very hurriedly.

Mr. Rose: I haven't studied these. As you will hand them, if it appears these are going to be offered in evidence, I may be able to assist in expediting this thing. I can't stop to look these over carefully now.

Mr. Lucas: Everything which I have handed now and which I will hand this witness now are in evidence.

Mr. Rose: They are already in evidence?

Mr. Lucas: They are already in evidence.

Mr. Rose: Then let me take a look at them. What part of this document?

Mr. Lucas: With relation to Exhibit 14, I will ask you if you are prepared to stipulate that on the photostatic [685] copy of the recollection receipt the words "Wake Development Co." and "Alda Faulkner" were written on the original of which that is a photostat by Alda Faulkner.

Mr. Rose: Yes. That name is subscribed to by

(Testimony of James V. P. Conway.)  
that person.

Mr. Lucas: All right. I show you Exhibit 15, consisting of four checks, on the checks of Wake Development Co., and ask you if that is a true signature of J. M. Danziger on there.

Mr. Rose: I so stipulate.

Mr. Lucas: I show you Government's Exhibit 16, being an original application for 1, 2, 3, 4, 5, 6 applications for money order, and on each of the applications there appears the handwriting name "A. Levy," and I will ask you if you will stipulate that that signature "A Levy," as well as the handwriting, is the signature of Jacob M. Danziger, the defendant in this action. Will you so stipulate?

Mr. Rose: Yes.

Mr. Lucas: Now, I understand that in the course of our investigation by Mr. Mainland here we found that a man by the name of A. Levy was, in fact, related to Mr. Danziger, for whatever relevancy that may have. He does have a relative by the name of A. Levy.

I show you Government's Exhibit 18 in evidence, and direct your attention to the Western Union money order application and handwriting thereon, and particularly the [686] signature of "A. Levy," and ask if all of the handwriting on that application for money order, including the words "George Carleton," and the address is in the handwriting of J. M. Danziger.

Mr. Rose: We so stipulate. Let's be sure of what we are talking about——



(Testimony of James V. P. Conway.)

Mr. Lucas: Only the first document on top, the application.

Mr. Rose: The application for money order, so stipulated.

Mr. Lucas: I will show you Government's Exhibit 19, in evidence, and particularly that portion having to do with the application for money order "Pay to George Carlton, Hotel Willard, 76th St. and West End Ave., New York City," and the signature "T. Mack"; below that "Hotel Alexandria," and I will ask you if you will stipulate that that is all in the handwriting of defendant Danziger.

Mr. Rose: You are addressing the stipulation—

Mr. Lucas: Only to the Western Union money order application.

Mr. Rose: So stipulated.

Mr. Lucas: I direct your attention to Government's Exhibit 20, that portion of it showing the application for the Western Union money order, the handwriting "Pay to George Carlton," and the signature "A. Levy," and ask you if that is in the handwriting of the defendant Danziger.

Mr. Rose: So stipulate. [687]

Mr. Lucas: I show you Government's Exhibit 21, being another photostatic copy of Western Union application for money order and direct your attention to the handwriting "George Carlton Western Union will call New York City," and the signature "A. Levy," and ask you if that is all in the handwriting of the defendant Danziger.

Mr. Rose: So stipulated.

(Testimony of James V. P. Conway.)

Mr. Lucas: I show you Government's Exhibit 22, and particularly call your attention to an application for Postal Telegraph money order, the handwriting "Mr. George Carlton will call New York City," and the signature "A. Levy Hotel Alexandria," and ask you if you will stipulate that is all in the handwriting of defendant Danziger.

Mr. Rose: That is, just the application for money order?

Mr. Lucas: That's right.

Mr. Rose: So stipulated.

Mr. Lucas: I show you Government's Exhibit 29, being a cashier's check, "Pay to the order of A. L. Roberts," and on the reverse side of the check I direct your attention to an endorsement, "A. L. Roberts," and ask you if you will stipulate that the endorsement on the back of the check "A. L. Roberts" is in the handwriting of the defendant Danziger.

Mr. Rose: We do not stipulate to this particular writing. [688]

Mr. Lucas: Very well. I show you Government's Exhibit 38, the same being a check, cashier's check, on the First National Bank of Farmingdale, and ask you if you will stipulate that the endorsement on the back, "Alice B. Skinner Adeline B. Skinner," are in the handwriting of Mr. Danziger or Alda Faulkner; and if the stipulation is that it is in the handwriting of Alda Faulkner, will you stipulate that it was placed there with Mr. Danziger's knowledge, consent, and approval?

(Testimony of James V. P. Conway.)

Mr. Rose: If my memory serves me, there is as part of the exhibit in this transaction a letter advising Miss Skinner that the check had been endorsed by somebody in the Wake Development Company, and that it cleared the bank. We stipulate that that is the case.

Mr. Lucas: Then, the reference in the letter is to this check?

Mr. Rose: Without a doubt. It mentions the date and the amount.

Mr. Lucas: I show you Government's Exhibit 39, a letter apparently addressed to Miss Skinner, from which the top of the letterhead has been taken off, and ask you if you will stipulate that the signature at the bottom of the letter is the genuine signature of Danziger.

Mr. Rose: We so stipulate.

Mr. Lucas: I show you Government's Exhibit 44, being a carbon copy of a letter dated October 4, 1939, addressed [689] to Miss Adeline B. Skinner, and ask you if you will stipulate that the initials at the bottom of the letter, "JMD Pres" is in the handwriting of the defendant Danziger.

Mr. Rose: This is the letter I was talking about with relation to the check, and we stipulate to those pencilled initials and the word "Pres" as being in the handwriting of Danziger.

Mr. Lucas: I show you Government's Exhibit 54 and call your attention to pencilled notations on the reverse side of a letter on McCoy's stationery, 541 Grant Street, Cadiz, Ohio, dated February 24,

(Testimony of James V. P. Conway.)

1938, and ask you if you will stipulate that the pencilled memoranda in words on the back of that letter are in the handwriting of the defendant Danziger.

Mr. Rose: You have reference to the second document in this exhibit, which bears the date of February 24, 1938?

Mr. Lucas: I do.

Mr. Rose: Identified by Harold J. McCoy as a communication of his, on the back of which appears a pencilled draft of a letter which is, in turn, typewritten by the next document under date of February 26, 1938?

Mr. Lucas: Yes, I think it is exactly the same thing.

Mr. Rose: We stipulate that pencilled memoranda for the text of the next letter is in the handwriting of Danziger.

Mr. Lucas: Very well. I refer you to Government's [690] Exhibit 71, and to a portion of that exhibit, a yellow second sheet headed "Wilmington, November 15th, Wake Development Co., Dear Sirs"—

Mr. Rose: What year?

Mr. Lucas: There doesn't seem to be any year there, Mr. Rose. I am only referring to this for the purpose of identifying—

Mr. Rose: In other words, you just want a stipulation as to the pencilled handwriting?

Mr. Lucas: Exactly.



(Testimony of James V. P. Conway.)

Mr. Rose: As to whether it is the handwriting of Danziger?

Mr. Lucas: Right.

Mr. Rose: It is.

Mr. Lucas: I show you Government's Exhibit 75, being a tabulation of names and amounts, headed at the top, "To accompany schedule 'C'" and to the pencilled memoranda there under the caption "1940": May 11—Elizabeth Parsons 600 shares \$950 Aug. 8—W. E. Edwards 300 shares \$1000, total \$1950, and ask you if you will stipulate that that handwriting is in the handwriting of the defendant Danziger.

Mr. Rose: It is so stipulated.

Mr. Lucas: Now I show you Government's Exhibit 55, dated May 19, 1938, and addressed to Logan Lindley, and ask you if you will stipulate that the handwriting at the bottom of the letter reading, "Copy to OT" is in the handwriting of [691] Mr. Danziger.

Mr. Rose: This letter apparently did get in evidence.

Mr. Lucas: Yes, I think you insisted on it, Mr. Rose.

Mr. Rose: I did?

Mr. Lucas: To my recollection.

Mr. Rose: Well, we will stipulate, without acceding to your interpretation of the pencilled memo., that whatever it is is in the handwriting of Danziger.

Mr. Lucas: All right. I accept all those stipu-

(Testimony of James V. P. Conway.)

lations. I show you now Government's Exhibit 68, and direct your attention to that part of it which is found in the next to the last sheet of the exhibit, and being the last part of the exhibit, the handwriting at the top of the letter is "Trinidad International Petroleum Lt., 14 Floor Continental Building, Los Angeles, Cal.," and I will ask you if you will stipulate that above the Trinidad International Petroleum writing there is a notation as follows: "OT—We have not answered this—please instruct," and ask you if that is in the handwriting of Mr. Danziger.

Mr. Rose: I believe, Mr. Lucas, that the record will reflect the the testimony of Danziger, during the course of his sworn statement, respecting his opinion as to this portion of this exhibit, and we will stand on that. If you will recall, he said that he thinks it is his handwriting, but it may not be. We will stand on that testimony in relation to this particular item. [692]

Mr. Lucas: Very well. I show you Government's Exhibit 65, being the note journal of the Trinidad International Petroleum Co., and ask you if you will stipulate that all of the writing in that, and the figures opposite the writing, is in the handwriting of Mr. Danziger.

Mr. Rose: Mr. Lucas, we are prepared to stipulate that each and all of the writing and figures in this document in pen and ink are in the handwriting of Danziger. There is an indistinguishable little pencilled thing in this page which is not the

(Testimony of James V. P. Conway.)

writing of Danziger, and I don't even know what it says. Do you know what it says?

Mr. Lucas: I don't know, and I am really not interested. I am perfectly willing to exclude that.

Mr. Rose: Other than that, it is stipulated that all of the writings and the figures therein are in the handwriting of Danziger.

Mr. Lucas: All right.

Q. By Mr. Lucas: Mr. Conway, I will ask you if in the course of your work in preparing to testify in this case you were given exemplars in the handwriting of Mr. Danziger.

Mr. Rose: Just a moment. I object to that as calling for a conclusion of the witness, no proper foundation laid. I address that objection to incorporating in the question the term "exemplars," since if such were the case they would be the best evidence.

Q. By Mr. Lucas: Well, alleged exemplars of Mr. [693] Danziger's handwriting?

Mr. Rose: Then we object to it as incompetent and immaterial and not the best evidence.

The Court: Overruled.

The Witness: Yes, I examined writings which were purported to have been written by Mr. Danziger, and others that were questioned to be written by him.

Mr. Rose: Just a moment. If you don't mind, I was going to ask the court for an exception to the ruling.

The Court: Exception allowed.

(Testimony of James V. P. Conway.)

Mr. Rose: I now move to strike his answer as a conclusion of the witness.

The Court: Motion is denied.

Mr. Rose: May an exception be noted as to that?

The Court: Exception allowed.

Q. By Mr. Lucas: Will you tell the court, Mr. Conway, what you looked at as exemplars of the handwriting of Mr. Danziger?

A. I was given a journal which, I believe, is in evidence here.

Q. I direct your attention to the very last exhibit, concerning which we had a stipulation, namely, Government's Exhibit 65, and ask if that is the journal that was provided you and which you used as an exemplar of Mr. Danziger's handwriting.

A. Yes, this Exhibit 65 is one of the exemplars that I [694] used.

Q. Anything else, now?

A. Yes, there were three certificates.

Q. Of stock?           A. Yes.

Q. Were you provided with sufficient exemplars on which you could base a conclusion as to a questioned document, whether or not that was in Mr. Danziger's handwriting?

Mr. Rose: I object to that as calling for a conclusion of the witness.

The Court: Overruled.

Mr. Rose: May an exception be noted?

The Court: Yes.



(Testimony of James V. P. Conway.)

The Witness: Yes, I had sufficient exemplars to reveal in my judgment the writing habits of Mr. Danziger.

The Court: You haven't identified the shares of stock.

The Witness: The certificates were in the names of Marthine Bandel, Adeline B. Skinner, and Elizabeth Parsons.

Q. By Mr. Lucas: I show you what has been handed to me, a certificate stub for 175 shares issued to Marthine Bandel, and a certificate stub C 214 for 100 shares to Adeline B. Skinner, and another certificate stub B 153 issued to Elizabeth Parsons, and ask you if you used any or all of those as your exemplars.

A. Yes, I used those three certificates.

Mr. Rose: Let me find out if that is his handwriting, [695] and you may have a stipulation on that.

You can have a stipulation, counsel, that the pen and ink notations on the certificate stubs Nos. 265, 214, and B 152 are in the handwriting of Danziger.

Mr. Lucas: I will accept the stipulation.

Q. By Mr. Lucas: Now, then, having those exemplars in mind, I show you Government's Exhibit 68, in evidence, and direct your attention to a notation that is on a handwritten letter on plain stationery, to the legend at the top there as follows, "O. T.—we have not answered this—please instruct," and ask you if you examined that in the

(Testimony of James V. P. Conway.)

course of your work in preparation for testifying in this case?      A. Yes, I did.

Q. And have you formed an opinion as to whose handwriting that is?      A. Yes, I have.

Q. And in your opinion whose handwriting is it?

A. Based on my examination of this pencilled endorsement here, and the exemplars of the handwriting of Danziger, I reached the conclusion that this notation was in Danziger's handwriting.

Q. Very well. Now, I show you Government's Exhibit 29 and ask you to direct your attention to the endorsement on the back of the check, the endorsement reading, "A. L. Roberts," and ask you if you have examined that before.

A. Yes, I have. [696]

Q. Have you an opinion as to whose handwriting it is in?

A. Not an unqualified conclusion. I did reach an opinion, yes.

Q. And what is your opinion?

A. Well, I am inclined to the conclusion that this endorsement, "A. L. Roberts" is in the same handwriting as this pencilled notation in the exemplars of Danziger. There is somewhat more variation exemplified in this endorsement, but it is in my judgment not without the range of Danziger's writing.

Mr. Rose: I move that the answer be stricken on the ground it is not competent and not an expert opinion; purely surmise, conjecture, and speculation.

(Testimony of James V. P. Conway.)

The Court: Stricken.

Mr. Rose: If your Honor will permit a belated objection, I would appreciate it, your Honor, as to the previous question, for this reason: The question is really argumentative in this, your Honor—as I recall the sworn testimony in which inquiry was made as to this pencilled line, there was no denial there. The witness testified he believes it to be his handwriting, but it may not be. I do not believe, your Honor, although I am not particularly alarmed about this little bit of business here, I don't believe under the rules of evidence that it is proper. It calls for an opinion, since there is no denial or evasion in respect to this particular item. In other words, the witness, as I remember it, said that he believed it to be his handwriting, and I think [697] that is sufficient. There is no denial there, and therefore his opinion is offered in the form of impeachment, and I don't think there is any foundation for such evidence, and I therefore move that his testimony be stricken on the ground that it is immaterial and irrelevant.

The Court: The answer may stand.

Mr. Lucas: Now, Mr. Rose, I will ask you if you will stipulate for the record that as to any and all of the exhibits now in evidence where the signature J. M. Danziger appears, that is on the letterhead of the Wake Development Co., that it is the true signature of J. M. Danziger; and that as to any exhibit in evidence where the name Alda Faulkner appears, that it is the true signature of Alda Faulk-

(Testimony of James V. P. Conway.)

ner; and that where in those instances it appears that the signature J. M. Danziger, as testified to by Mr. Danziger in his sworn testimony read into the record, may have been written by Alda Faulkner, that as to that she had authority to sign.

Mr. Rose: Well, I would be glad to enter into that stipulation if I were afforded the opportunity to glance over this omnibus mass of documents. As you will recall, Mr. Lucas, in response to a suggestion of his Honor, we—at least, I dispensed with an examination of numerous of these documents, in order to expedite matters, and they went in subject to the right given me by his Honor to probably add to any objections then interposed. I would like an [698] opportunity to go over these before I enter into an omnibus stipulation of that kind. In other words, there may be one or two that may be questionable. I don't know. I would like to look at them.

Mr. Lucas: I don't want to hurry you on anything, but I have in mind that you said there would be no question about those and you would stipulate about them, and I want to get that stipulation in the record.

Mr. Rose: As I told you, Mr. Lucas, and you will find I will have no inclination to depart from that statement made to you in the presence of the Judge in open court, we will never raise a question of the signature of J. M. Danziger or Alda Faulkner where it appears to be their signature, and I don't intend to make you prove it. But there are numer-



(Testimony of James V. P. Conway.)

ous of these documents that I haven't even glanced at, because you will remember that his Honor had quite a number of them go in rapidly before I had a chance to look at them. Before I enter into a stipulation of that kind, I want to look at the documents.

Mr. Lucas: Yes, I will accept your statement.

Mr. Rose: I will do it on my own time. We are adjourning at what time today?

Mr. Lucas: 4:15 the court said. I want to ask you will you do it——

Mr. Rose: I will do it on my own time.

Mr. Lucas: Will you do it so I can excuse this witness [699] or have his testimony shortly after 10:00 o'clock tomorrow? This witness is down here from San Francisco, and I am anxious to excuse him.

Mr. Rose: I am assuring you, Mr. Lucas, and his Honor, that you will have no occasion to bring this witness down to give an expert opinion on any signature involved here, except I would like to look at the papers before I cover all of the exhibits.

Q. By Mr. Lucas: Mr. Conway, in connection with the testimony you expected to give in this case, did you make any investigation with respect to the typewriting on any of these letters?

A. Yes, I examined several typewritten letters with respect to the typewriting itself.

Q. Were you given exemplar to examine during the course of your investigation?

(Testimony of James V. P. Conway.)

A. Yes, I was given three letters as standard specimens.

Q. Three letters which?

A. Three letters as to standard specimens or exemplars.

Q. I see. I show you three letters and an envelope attached, and ask you if those are the three letters that you were provided with.

A. I examined these, but they weren't the three that I referred to.

Q. I notice some handwriting on the exhibit that I [700] handed you, on the letter dated Tuesday the 6th, "Dear OT," and ask you if in the course of your examination you examined that handwriting on that letter.

A. Yes, I covered this handwriting.

Q. Did you form an opinion as to whose handwriting that was in?      A. Yes, I did.

Q. And in whose handwriting is that, in your opinion?

A. In my opinion this is in the handwriting of the defendant.

Q. Mr. Danziger?

A. Yes. These pencilled notations.

Mr. Lucas: I ask that this entire exhibit be marked. for identification at this time. It perhaps could all go in at this time, but there are two documents, perhaps, that have not been tied up, so I ask that it be marked for identification.

The Clerk: 95, for identification.

(The documents referred to were marked as

(Testimony of James V. P. Conway.)

Government's Exhibit No. 95, for identification.)

Q. By Mr. Lucas: Now, then, I show you Government's Exhibit 85, and ask you to go through that and see if you can determine if any of the exemplars of typewriting which were provided you are in that exhibit.

A. Yes. One of them was a letter dated May 2, 1940, on the letterhead of Wake Development Co., addressed to Mrs. [701] Elizabeth Parsons; the second was a letter on the letterhead of Wake Development Co., dated August 10, 1940, addressed to Mrs. Frank B. Parsons. Those two are in Exhibit 85.

Q. I now show you Government's Exhibit 70 and ask you to examine that and tell me whether or not the third exemplar is in that exhibit.

A. Yes, the third letter is the last part of Exhibit 70, a letter dated May 25, 1938, on the letterhead of Wake Development Co., addressed to Raymond F. Walpert, Esq., Sebring, Ohio.

Mr. Lucas: I ask that this piece of paper be marked as government's exhibit next in order, for identification.

The Clerk: 96.

(The document referred to was marked as Government's Exhibit No. 96, for identification.)

Q. By Mr. Lucas: Mr. Conway, I show you

(Testimony of James V. P. Conway.)

Government's Exhibit 96, for identification, and ask you if you have seen this exhibit before.

A. Yes, I have examined the typewriting on this exhibit.

Q. Did you examine the typewriting on that exhibit in connection with the typewriting on the three exemplars about which you have just been testifying?

A. That's right, yes.

Q. Did you form an opinion as to whether or not the typewriting on Government's Exhibit 96, for identification, was typed on the same typewriter as the three documents which [702] you used as exemplars?

A. Yes, I did.

Q. And what is that opinion?

A. Well, it is my conclusion and opinion that the typewriting on this Exhibit 96 and the typewriting on these three documents that I previously referred to as exemplars all came from the same typewriting machine. In other words, the four letters were written on the same machine, in my opinion.

Mr. Rose: Pardon me. I didn't hear the last part. Will you read it please?

(Answer read.)

Q. By Mr. Lucas: I show you Government's Exhibit 95, for identification, and ask you if you can recall whether or not you had any part of Exhibit 95 in connection with your investigation as to the typewriting.

A. Yes, I examined this original letter and the



(Testimony of James V. P. Conway.)

two carbon copies underneath it which form a part of Exhibit 95.

Q. And did you form an opinion as to whether or not any one of those three letters in Exhibit 95 was written on the same machine as Government's Exhibit 96?      A. Yes, I did.

Q. And what was that opinion, or what is that opinion?

A. Well, it is my conclusion that this original letter addressed to "Dear OT" dated Tuesday the 6th, which is the uppermost paper in Exhibit 95, was typewritten on the same [703] typewriter as was used to prepare Exhibit 96 and the three letters referred to as exemplars.

Mr. Lucas: Counsel, I have one more exhibit that I just learned from Mr. Mainland has probably not been submitted to Mr. Conway, so I can't complete my questioning of Mr. Conway now. If you care, you may cross examine him as to the matters already testified to and finish upon that, and take the matters that I will take up with him in the morning, at that time, or you may defer the whole thing, whatever your pleasure is.

Mr. Rose: This is not a matter of pleasure, particularly. [704]

#### Cross Examination

By Mr. Rose:

Q. In giving your opinion as to the questions propounded to you in direct examination, you merely endeavored to state an opinion based on

(Testimony of James V. P. Conway.)

your experience in the realm of comparisons of typewriting and handwriting, is that it?

A. Experience in the analysis of typewriting, generally, and particularly to an examination of this typewriting, yes.

Q. You have stated to what extent you resorted to exemplars in basing and arriving at your opinion?

A. I really haven't given any reasons for my opinion. I wasn't asked.

Q. Your opinion may or may not, in your own mind, be subject to error?

A. Well, we are all human. I admit my own fallibility, if that is what you mean.

Q. In other words, you admit that you may be mistaken in one or more particulars about the matters over which and concerning which you have given us an opinion?

A. Well, I admit there is always a possibility of error, and this case isn't any exception. I certainly don't believe that my opinion is erroneous in this case.

Q. Let's see if I understand the purport of your testimony respecting the subject of typewriting. You have given an opinion that the same type of machine was used in [705] each case, is that it?

A. That the same machine.

Q. The identical machine, the particular typewriter, in each instance?

A. That is correct, yes.

(Testimony of James V. P. Conway.)

Q. And have you made any allowance for time at all?

A. Yes. In other words, I took them chronologically, there is some wear and tear that shows on machines over a long period of time.

Q. You recognize, of course, that there are similar machines located in different places?

A. Yes, there are similar machines, yes.

Q. It is within the realm of your experience that more than one machine may very likely have been used, although you have an opinion it was the same machine?

A. No, that isn't true. I found peculiarities in this typewriting which in my judgment definitely reflects that all these documents were written on the identical typewriter.

Q. That is, in your opinion, the line up of the type has certain peculiarities as you observed them, and for that reason you believe they were all typed on the same machine?

A. Yes, there are certain peculiarities. There is a defect or two in this machine. In other words, the identification is not based alone on the design of the type, but on different peculiarities within a given design. [706]

Q. That is, its alignment and so forth?

A. Alignment and scars and defects, and the matter of striking the platen, and so forth.

Q. I haven't read these documents, but let me ask you this: From whom did you procure them?

(Testimony of James V. P. Conway.)

A. These documents were presented to me by Mr. Mainland for examination.

Q. How long ago?

A. I believe it was on the morning of the 18th; yes, that's right.

Q. That is, after this trial started?

A. Yes, that's correct.

Q. And did you make microscopic examination of these papers?

A. No; I used a magnifying glass, I didn't use a microscope.

Q. How much time would you say you devoted to this analysis of these particular typewriting memoranda?

A. The typewriting alone?

Q. Yes.

A. Several matters, I worked at it intermittently, that is, an hour, and an hour again; probably not over three hours altogether.

Mr. Rose: I think that will be all, your Honor.

Mr. Lucas: That is all now. I have to excuse this witness at the present time. I am not through with him. [707] I will call him to the stand again in the morning.

Mr. Conway, we have another paper or two to show you.

I thought it had been shown to this witness, your Honor, before I put him on the stand.

(Witness temporarily excused.)

Mr. Lucas: Call Mr. Carter.



WILLARD EUGENE WARREN  
(WARREN C. CARTER),

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand, please. State your name.

The Witness: My real name is Willard Eugene Warren. I am known in this indictment as Warren C. Carter.

Mr. Rose: May I hear that, please?

(The record was read.)

Direct Examination

By Mr. Lucas:

Q. Where were you born, Mr. Carter?

A. I was born in Robinson, Illinois.

Q. When did you assume or first use the name Warren C. Carter?      A. About 1922.

Q. What has been your vocation or work since 1922?

A. I have been a securities salesman since 1922, with the exception of 1926 when I was with the Hollywood Real Estate Development Company in Florida, and then in 1940 I was three years with the Grolier Society, [708] Incorporated, selling children's educational books; and then for one year in 1944 I was with Standard & Poor's Corporation in New York City, selling their Directory of Executives and Directors.

Q. Were you ever convicted of any crime prior to the year 1936?      A. No, sir.

(Testimony of Willard Eugene Warren.)

Q. Were you indicted and convicted of an offense in 1936?

Mr. Rose: Just a moment. I object to that as irrelevant and immaterial. The question is purely an impeaching question. I submit it is incompetent and tantamount to an impeachment of his own witness, and an invasion of the realm of cross examination.

The Court: You may answer.

The Witness: I was indicted in Chicago, Cook County, Illinois, in 1936 for conspiracy.

Q. By Mr. Lucas: Were you convicted?

A. Yes, I was.

Q. Were you sentenced? A. Yes, I was.

Q. Have you served any part of that sentence?

A. No, I have not.

Q. Who was tried along with you?

Mr. Rose: Just a minute. I object to it as irrelevant and immaterial, calling for conclusion of the witness. [709]

The Court: You may answer.

The Witness: I was tried in that trial with two other defendants. There were, however, other indictments. I was tried with two defendants, Henry Sather and Earl Stimson.

Q. By Mr. Lucas: What name were you tried under?

Mr. Rose: I object to it is irrelevant and immaterial and not proper direct examination.

The Court: You may answer.

The Witness: William Carmen.

(Testimony of Willard Eugene Warren.)

Mr. Rose: Was that William or Willard?

Mr. Lucas: William Carmen.

Q. By Mr. Lucas: Did you ever meet the defendant in this action Jacob Danziger?

A. Yes, I did.

Q. When did you meet him?

A. I met him about 1935, the early part of 1935, I believe.

Q. Where did you meet him?

A. I met him in New York City.

Q. Will you relate the circumstances of meeting him?

A. I visited a brokerage office in the lower part of Broadway in New York City by the name of D. B. Howe and Company, and I had done some business with Mr. Howe, and during the course of our conversation he told me about a man named J. M. Danziger who was here from California, who had what he said was a very good oil proposition. He also [710] told me that he was interested in securing some good salesmen, and he thought——

Mr. Rose: Pardon me. I wasn't altogether certain, your Honor, but it is my impression—I may be in error—that he is relating now a conversation between Howe and himself. Now, unless it is indicated that the defendant Danziger was present, I object to it as hearsay, your Honor.

The Court: I consider it preliminary.

Mr. Lucas: That is just what I was going to say, your Honor.

Mr. Rose: Very well, your Honor.

(Testimony of Willard Eugene Warren.)

The Witness (Continuing): He gave me the address of Mr. Danziger, which I believe at that time, and in fact I know it was the Barbizon Plaza Hotel, and he said, "Why don't you look him up?" Well, I don't remember whether I looked him up right away or not, because there might have been a little lapse of time there; but later I did call him, and he said to come over to the hotel.

Q. By Mr. Lucas: You say "him", you mean Mr. Danziger?

A. Mr. Danziger: I called Mr. Danziger at the Barbizon Plaza Hotel. I told him my name was Warren C. Carter, that I had spoken to Mr. Howe about his deal; and he said, "Yes," he said, "I would be very glad to talk to you, come over to the hotel." So I did go over to the hotel and I called him from downstairs, and he asked me to [711] come up. And when I got to his room, he had another person in the room, a man who I recognized by the name of Koch, K-o-c-h I think it is spelled; he introduced me to Mr. Koch, and stated that he was Mr. Davis, and, incidentally, mentioned that Mr. Davis was working on his deal, that he was a salesman on the deal.

Mr. Rose: Just a second. Will your Honor bear with me a minute? I am trying to reconcile in my mind now—will you go back to the part where he says there was another man in the room?

(The record was read as follows:)

"A. \* \* \* and when I got to his room, he had another person in the room, a man who I recognized



(Testimony of Willard Eugene Warren.)

by the name of Koch, K-o-c-h I think it is spelled; he introduced me to Mr. Koch and stated that he was Mr. Davis, and, incidentally, mentioned that Mr. Davis was working on his deal, that he was a salesman on the deal.”)

Mr. Rose: I move that be stricken, your Honor, on the ground that is not competent and definitely not binding; there is nothing to indicate that recognition was ever conveyed to any person. It is purely a voluntary statement.

The Court: Motion denied.

Q. By Mr. Lucas: Pick it up, Mr. Carter.

A. May I have the last, there? [712]

(The record was read.)

A. (Continuing): After he and the so-called Mr. Davis had a little further conversation, Mr. Davis left. After he went out, Mr. Danziger said to me, “Do you know that fellow?” And I said, “Yes, I do, slightly.”

He said, “I suppose you know him under the name of Koch?”

And I said, “Yes, that is the way I do know him.”

And he said, “Well, he uses the name Davis working on this deal.”

He says, “I find that most stock salesmen like to use aliases, and he thinks that the name of ‘Davis’ sounds better than ‘Koch’ anyhow.

Q. By Mr. Lucas: Did you and Mr. Danziger speak anything about the business that you went up there on?

(Testimony of Willard Eugene Warren.)

A. I said to Mr. Danziger, "I understand you have a proposition that I might be interested in. Will you tell me about it?"

He said, "I will be very glad to."

He then proceeded to tell me about the deal. He said that he was the President of the Trinidad International Limited, a corporation which owned valuable oil properties in Trinidad, British West Indies; that he had acquired the properties prior to the enactment of the Securities and Exchange Law, and formed his company and transferred his stock prior to the enactment of the Securities and Exchange [713] laws in 1933, and therefore his securities were exempt from any provision of that Act.

He told me that the personnel of the company consisted of himself as president, Mr. Andrews, Mr. Fennell, and a Dr. Paddleford. I believe he also stated at the time that there was a Mr. Davis with the company, but I am not sure now whether he said Davis had been with the company and was deceased then, or whether or not that was later, but the name Davis was mentioned during the conversation.

He told me that like all propositions of this sort it was his experience that the saleability of the deal depended a great deal on the way that it was set up, so he said for that reason that he had acquired a list of names in the South American Oil Fields Company, and another company that had some relation with that company called the All American Petroleum Company; that he had the list of stockholders

(Testimony of Willard Eugene Warren.)

of both these corporations, and that he had originated a plan whereby he had issued a right certificate, or caused a right certificate to be printed which gave the stockholders of the South American and All American Petroleum Companies the right to get a credit allowance for their shares in their respective companies of a certain amount per share, which I believe at the time was \$2.00. I think that was the price he allowed them, provided they paid \$3.00 per share in cash. On that basis he would issue one share of the capital stock of the Trinidad International [714] Petroleum Company and one preferential profit-sharing note of the same concern. He said that these right certificates which he had created were issued in blank; that he had not filled in the names of all the stockholders, that the salesman could take out a number of the blanks, and when he called upon the stockholder, after ascertaining how many shares he had either previously, or if it was an error to write in the amount of the shares, and that would be the right for the number of units that that man could subscribe to.

At that time I asked him if the officers and directors of those companies had entered into an agreement to allow him to do that. And he said to me, "You don't need to worry about that; I am an attorney; I have been in the oil business a great many years, I know a great deal about these transactions, and I have taken care of all that."

I did push him a little further, and he said it wasn't necessary to have any agreement with any

(Testimony of Willard Eugene Warren.)

board of directors, even if they could be found, because the stock had no value, and the companies were, so far as he knew, out of existence at the time, and there wouldn't be any one to object to it anyhow, and he said he couldn't see why I should have any objection, and I told him I didn't have any objection, but I just was curious to know what it was all about.

At that meeting he further told me something about his background. He told me that he had in his early years gone with Mr. E. H. Doheny, who was a very large oil operator, [715] and that he had subsequently become a director and a vice president in both the Pan American Petroleum and Transport Corporation, which Mr. Doheny controlled, and the Mexican Petroleum Company, which was another corporation which he said Mr. Doheny controlled. He told me that all of the men that he had brought with him in the setup of the Trinidad International Petroleum Company were former associates of his in the Pan American Petroleum Corporation and the Mexican Petroleum Company.

I asked him something about other properties that the company had besides the one in the Trinidad British West Indies, and I remember him bringing out some papers about some properties in the State of New Mexico. It seems as though there was a large aggregation of leases which he claimed he had some sort of a right in developing these leases. I don't remember the details, or just what he did tell me, further than that.



(Testimony of Willard Eugene Warren.)

I asked him if he had a list of names that I could go to work on immediately, and he said yes he did have, and I said, all right, the best thing to do was to give me some names and right certificates and some of the material you have here. I said, "Have you any sales material here?" And he said, "Yes, I have everything you need for a complete kit," and he showed me some letters that were written on the Trinidad International Petroleum letterhead, which were written to certain stockholders of the South [716] American Oil Fields Company and All American Petroleum Companies, and the letter was a resume of the officers and directors and the general setup of the Trinidad Petroleum Company, and stated therein that they would soon——

Mr. Rose: Just a moment. I submit, your Honor, that the letter would be the best evidence of its contents, and something should be indicated whether it is in existence or not.

Mr. Lucas: I am trying to find it for you, Mr. Rose.

Mr. Rose: Very well.

Q. By Mr. Lucas: I show you, Mr. Carter, what has at the top, "Dear Sir," and there is no date on this, and ask you if this is the thing you are talking about?

A. No, this is not the letter I am referring to now. I was talking about the letter that was written to the South American Oil Fields stockholders.

Q. I show you, then, another letter——

(Testimony of Willard Eugene Warren.)

A. This pertains to the Great Eastern Natural Gas.

Q. I show you another letter, then, that has some printing on it; is that what you refer to?

A. Well, this looks like the second page of that letter.

Q. All right. Is that the first page of it?

A. Yes. ,

Q. Before you testify about it, show it to Mr. Rose, please. [717]

A. Yes.

Mr. Rose: Will you develop this, please, Mr. Lucas, whether this writing that is on here—is this the one that was actually shown this witness? There is a lot of writing on here which I don't know if it may or may not be pertinent. Will you find out?

Q. By Mr. Lucas: I hand you that letter. What I am handing you is a 2-sheet document; what type of typing is that?

A. Well, just a minute, now. I want to read it a little bit. Yes, this is a letter, the typewritten contents of which is the same as the letter which I received. This letter, however, may be another letter which I did have occasion to review on another interview with Mr. Danziger.

Q. Now, directing your attention——

A. This is the same type of letter, this is similar in its writing and its preparation, and the wording is the same as the one I am referring to that I referred to. I am trying to keep it in chronological sequence.

(Testimony of Willard Eugene Warren.)

The Court: We will adjourn now, Mr. Lucas and Mr. Rose.

Mr. Lucas: Very well, your Honor.

The Court: The defendant is remanded to custody.

(Whereupon, at 4:10 o'clock, p.m., and adjournment was taken until 10:00 o'clock a.m., Wednesday, January 24, 1945.) [718]

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Los Angeles, California,

Wednesday, January 24, 1945, 10:00 a.m.

The Clerk: United States vs. Danziger, et al.

Mr. Lucas: Ready for the government.

Are you ready? Have you examined all those documents on the stipulation, Mr. Rose?

Mr. Rose: That is, insofar as any exhibits that have been heretofore marked, where the signatures of Danziger or Faulkner appear, that they are the signatures of those persons?

Mr. Lucas: Yes. And if any place is shown in the record or otherwise that Mrs. Faulkner might have signed Mr. Danziger's name, that she was authorized so to do?

Mr. Rose: We so stipulate.

Mr. Lucas: One more thing before we resume the testimony. Mr. Mainland called to my attention that when you asked us for what you introduced as Exhibit A, to-wit, the prospectus, Mr. Rose, we inadvertently gave you what would be termed an in-

(Testimony of Willard Eugene Warren.)

intermediate prospectus, it was one of the prospectuses filed by Mr. Danziger, or given to the Commission, but it was not the last one.

Mr. Rose: You have another one?

Mr. Lucas: I now hand you from the Commission files the registration statement that we have been talking about, and in it there is the last prospectus filed by Mr. Danziger; and the matters that I now hand you come from [720] the records and files of the Commission, and I suggest that they be made a part of Exhibit A, or I will offer them as a government matter.

Mr. Rose: Is this complete, Mr. Mainland?

Mr. Mainland: It is complete except the prospectus I handed you yesterday I pulled out of this file.

Mr. Rose: The prospectus is part of this?

Mr. Mainland: Yes.

Mr. Rose: Then, with the court's permission, I ask that this group of papers marked numerically in the upper left-hand corners 1 to 65, with the appellation on the front, "Federal Trade Commission Securities Division, Washington, D. C., Registration Statement" and the name of the issuer, "The Trinidad International Petroleum Limited" be incorporated and made a part of Exhibit A, as a complete record.

The Court: It may be done.

(The documents referred to were marked and made a part of Defendants' Exhibit A in evidence.)



(Testimony of Willard Eugene Warren.)

Mr. Lucas: I take it from the stipulation, then, that I will no longer need the services of Mr. Conway, and that this witness Conway may be excused, your Honor?

The Court: Yes.

Mr. Rose: Yes.

(Witness excused.)

Mr. Lucas: Will you resume the stand, Mr. Carter. [721]

WILLIARD EUGENE WARREN

(WARREN C. CARTER)

resumed the stand as a witness on behalf of the government and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. My recollection, Mr. Carter, is that last night when we took the adjournment you had asked for and I had in front of you some papers, if you can pick up your train of thought I will place the documents in front of you again——

A. May I ask for the last part of the transcript where I left off? Is that possible?

Mr. Lucas: Have you got that available, Mr. Reporter?

(The record was read.)

Mr. Rose: I move, your Honor, that be stricken.

(Testimony of Willard Eugene Warren.)

The Court: Let's start over again on this subject. Start over again on this subject. Let the record show what was said on this particular subject at the conclusion of the day yesterday is stricken and we will begin again.

Mr. Lucas: All right.

Q. By Mr. Lucas: Mr. Carter, you were relating your testimony and conversations with Mr. Danziger in New York at one of your meetings with him.

The Court: The first meeting, when he first met him.

Q. By Mr. Lucas: When you first met Mr. Danziger in New York; will you pick up the thread——

The Court: 1935, wasn't it?

Q. By Mr. Lucas: Will you pick up your thread in 1935, and start fresh on that, and see if we can't proceed?

A. Do you mean you want me to re-testify to the same things I testified to yesterday over again?

The Court: No.

The Witness: Or do you want me to pick up on the subject of this material I was going over with Mr. Danziger?

The Court: That's right.

Mr. Lucas: That's right.

The Witness: All right, I will do that.

Mr. Danziger showed me a letter which was on the letterhead of the—a copy of it, designated that it was on the letterhead of the Trinidad International Petroleum Limited. It was a typewritten copy, and

(Testimony of Willard Eugene Warren.)

this copy that I have before me now appears to be the original copy. I remember Mr. Danziger said to me that his was an original copy, and he kept it in his files. It was typewritten, and it set forth all the officers and directors, and gave a slight background and resume of their antecedents.

At that time this particular letter which I am looking at now on the stand did not have any pen and ink writing on it. It just had the typewritten matter on it.

The Court: Is this an exhibit in the case?

Mr. Lucas: It will be in just a moment, your Honor, as soon as he finishes with his use of it. [723]

The Witness: At that time after reading this letter, I asked Mr. Danziger what he meant by the last paragraph of the letter.

The Court: Have you seen the letter, Mr. Rose?

Mr. Rose: No, your Honor. I asked counsel, suggested to opposing counsel yesterday to ascertain from this witness if this is the purported document, and whether this writing was on it. I haven't read the writing.

The Court: Let's give it a number so we will talk about it by number.

Mr. Lucas: Yes. I offer it for identification as the government's exhibit next in order.

The Clerk: 97.

(The document referred to was marked as Government's Exhibit No. 97, for identification.)

(Testimony of Willard Eugene Warren.)

The Court: Take it over and read it, Mr. Rose, so you will know what its about. I don't know, but let's make sure you do.

Mr. Rose: My impression is, your Honor, that somewhere in this maze of documents here, as part of the file involving one of the transactions here, it occurs to me there is a letter that has the physical characteristics of this one, and without the writing on it. Mr. Mainland can, perhaps, tell you which exhibit has that attached to it.

Mr. Lucas: I think counsel's statement is right, and I thought we had provided him with a photostat of it.

Mr. Rose: No. There is one attached to one of these [724] files. You will find a letter with these physical characteristics on it, without the writing on it; is that right?

Mr. Lucas: I think you are right. I think it is attached to Exhibit 42.

Mr. Rose: Why don't you show him Exhibit 42 and let's find out if that is what we are talking about.

Mr. Lucas: May we have Exhibit 42?

Q. By Mr. Lucas: I show you Government's Exhibit 42, and ask you if you have seen a similar document before.

A. Yes, I saw this later, but not at the time I am talking about now.

Mr. Rose: Do you want to go on?

Mr. Lucas: No, we will stop until you get through perusing that.



(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Now, I hand you, Mr. Carter, what has been marked Government's Exhibit 97, and ask you to resume your testimony.

A. I asked Mr. Danziger what he meant by the last or the second to the last paragraph from the bottom of this letter which says, "For the purpose of providing development funds, this company has received authority from the Federal Trade Commission at Washington, D. C., to offer to the public 200,000 shares of its Treasury stock at par, \$5.00 per share. It is also making a similar offer in England. No part of these issues will be offered to you."

At that time I was a little uncertain what he meant [725] about this, and I asked him to explain. And he told me that he had registered 200,000 shares of stock with the Securities Division of the Federal Trade Commission, and had received a letter from them stating that he was permitted to sell the stock at \$5.00 per share with a commission of 20 percent allowed.

I asked him if this was a part of the issue we were selling, and he said, "No, we are not offering that for sale."

I said, "Well, why do you have it in this letter if it is not offered for sale?"

He said, "That is to give you sales propaganda." He said, "You ought to be able to understand that." He says, "In other words, here the Commission has authorized this stock to be sold at \$5.00 a share." He says, "On the South American Oil Field stockholders, you are giving them the right to buy it at

(Testimony of Willard Eugene Warren.)

\$3.00 and giving a credit allowance of \$2.00 on their stock, and in addition to that we are giving them one preferential profit-sharing note of one pound par value or denomination. We are giving them \$10.00 worth of par value and they are only paying in \$3.00 in cash.” “Of course,” he said, “the stock we are selling them, so you will understand it correctly, is the personally owned stock of the Wake Development Company, but,” he said, “the public won’t know the difference, and as far as that is concerned,” he says, “we clear ourselves by specifically stating in here that [726] ‘No part of these issues will be offered to you.’ ”

Q. By Mr. Lucas: May I interrupt you there and show you a document and ask you if that is the document that you have seen before, or, rather, a copy of the document?

Mr. Rose: Is that an exhibit?

Mr. Lucas: I just want to see if it is, Mr. Rose. If it isn’t, I won’t offer it.

Mr. Rose: Mr. Lucas, I am not saying this critically, but as I understand the rules of evidence if you want to interrogate a witness about a document, the rules of evidence require that you display it to me before you make inquiry of the witness.

Mr. Lucas: I was merely offering it——

The Witness: No, I didn’t see this letter, Mr. Lucas.

Mr. Lucas: That settles it, Mr. Rose. Do you want to look at it now?

Mr. Rose: Yes.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: You are perfectly welcome.

Q. By Mr. Lucas: All right. Now, go ahead, pardon my interruption, Mr. Carter.

A. I told Mr. Danziger I understood what he meant. I asked him if he had any other literature. He showed me a——

The Court: You better put in Exhibit 97 now.

Mr. Lucas: Yes. I now offer Government's Exhibit 97 [727] in evidence, if the court please.

Mr. Rose: Your Honor, as I understand the evidence here in relation to this Exhibit 97, the witness has testified here in respect to this document he was shown, that it didn't have the writing on it. Under those circumstances, your Honor, I am going to object to this particular document being received in evidence as no proper foundation being laid.

The Court: What is the explanation of that?

Mr. Lucas: I hadn't gotten to that, your Honor, when your Honor asked me to offer it.

Mr. Rose: Excuse me.

Mr. Lucas: Yes.

Mr. Rose: Your Honor will note that the nomenclature referred to—I am in error about that. There is, of course, in this Exhibit, your Honor, No. 97, a nomenclature along the lines that he has testified to orally without objection, but that testimony is in; now he is offering this document, without any foundation as to whether this witness actually saw this particular document or whether he saw one with a paragraph containing the nomenclature he has in-

(Testimony of Willard Eugene Warren.)

dicated. I am objecting to this because there is no proper foundation laid.

The Court: The offer has been withdrawn. Explain the writing, if you can.

Q. By Mr. Lucas: Mr. Carter, I show you [728] Government's Exhibit 97, for identification, calling your particular attention to the handwriting and interlineations both on the front page of the first sheet and on the back page of the first sheet, and ask you——

The Court: And all the pen marks, the things that are stricken out, too.

Q. By Mr. Lucas: Yes, and ask you if you know in whose handwriting those pen and ink notations are.

Mr. Rose: I object to that as immaterial and incompetent. The question is did this witness ever see that document with any of that writing on it, or with these delineations.

The Court: Does he know how the writing came on there?

Mr. Lucas: I am trying to find out.

The Witness: I saw this document before the handwriting was placed on it. I saw this document after the handwriting was placed on it.

Q. By Mr. Lucas: And do you know whose handwriting it is?

A. This handwriting is Mr. Danziger's.

Mr. Lucas: I now offer——

The Court: How do you know that?

The Witness: Because I saw him write it out.



(Testimony of Willard Eugene Warren.)

The Court: Did you see him make those changes?

The Witness: Yes.

The Court: Cross out those things that are crossed out? [729]

The Witness: Yes, I did.

The Court: You saw it without the pen and ink changes and interlineations?

The Witness: I saw it without the pen and ink markings and writings on it, because at the first interview I had with Mr. Danziger he took this out of his portfolio and was showing me part——

The Court: Then, when did he make the changes?

The Witness: He made the changes at another meeting I had with him when he took the same identical letter out and made these changes to adapt it to another deal.

The Court: It may be admitted. Do you want to put something in the record, Mr. Rose?

Mr. Rose: No, your Honor, I just wanted something in here to explain that. There wasn't anything here.

The Court: 97 is admitted.

(The document referred to was marked as Government's Exhibit No. 97, and was received in evidence.)

Q. By Mr. Lucas: Now, proceed, Mr. Carter.

A. I asked Mr. Danziger if he had other sales literature to help me in making sales to the South American stockholders, and he then showed me a

(Testimony of Willard Eugene Warren.)

letter written on the letterhead of the Pan American Petroleum and Transport Corporation. He also showed me a letter written on the stationery of Mr.—private stationery of Mr. E. H. Doheny, or E. L. Doheny, I think it was. The letter on [730] the Pan American Petroleum and Transport Company was signed by Mr. Danziger, and on the top it had a list of all the directors of that corporation, and among them was Mr. Danziger's name. It went on to state that he accepted the chairmanship—

Mr. Rose: Just a second.

Mr. Lucas: Let the record show that I have handed to counsel, for examination, photostatic copies of the letters about which the witness is now testifying.

Mr. Rose: I was going to interject that you have shown me the letters, and I take it from what you have shown me the letters he is talking about are these letters, and I was going to interject they would speak for themselves and would be the best evidence.

Q. By Mr. Lucas: I show you, Mr. Carter, three photostatic copies of letters, two of which are on the letterhead of the Pan American Petroleum and Transport Company, those two sheets comprising what is apparently a completed letter, and on the second sheet occurs the photostatic signature "J. M. Danziger," and ask you if that is a photostat of one of the letters which Mr. Danziger showed you at that time.

(Testimony of Willard Eugene Warren.)

A. Yes, this looks like the same type of letter that I had at that time.

Q. I show you now one on the letterhead of E. L. Doheny, and ask you to examine that and tell me if that is [731] a photostatic copy.

A. That looks to be the same letter.

Mr. Lucas: I offer these three documents, they seem to be connected together, your Honor, in the witness' testimony, as government's exhibit next in order.

The Clerk: 98.

The Court: 98 has been offered, Mr. Rose.

Mr. Rose: Your Honor, I haven't any objection to those. I take it that is part of the transaction. It certainly would be competent.

The Court: Admitted.

(The documents referred to were marked as Government's Exhibit No. 98, and were received in evidence.)

Q. By Mr. Lucas: Go ahead, Mr. Carter.

A. I then asked Mr. Danziger if he had any literature that would show me any exemption for the stock under the provisions of the Securities and Exchange Act. He had a photostat reproduction of a letter that had been addressed to D. B. Howe, I think it was 32 Broadway, New York, in which it stated—I can't give you the exact wording of it, but it was very brief and stated that in the opinion of the Exchange the stock had been issued prior to the enactment of the Securities and Exchange Act and was exempt, or something to that effect, I can't

(Testimony of Willard Eugene Warren.)

remember the exact wording of it. I don't know whether there is a letter like that, and if there is and you show it to me, I will tell you [732] whether I have seen it previously.

Then I asked him if he had any other sales literature, and he said yes. He said, "I have a right certificate which I printed that covers both the South American and the All American Petroleum Company."

He had two different right certificates with the same wording on it, although the arrangement of the border, and so forth, was different; but in sum and substance they contained the same indentures or writings.

Q. I show you, after having first shown to counsel, a printed document, the heading of which says, "Certificate of Rights to Stockholders of South American Oil Fields, Inc., and All-Americas Petroleum Corporation" and ask you if that is a facsimile of the document which Mr. Danziger had and about which you are now testifying.

A. Yes, this is one of the certificates.

Mr. Lucas: I now offer this in evidence as government's exhibit next in order.

The Clerk: 99.

The Court: Admitted.

(The document referred to was marked as Government's Exhibit No. 99, and was received in evidence.)

The Witness: I asked Mr. Danziger about the properties in America that the company owned, be-



(Testimony of Willard Eugene Warren.)

sides the Trinidad properties, and he told me that he had 20,000 acres, or something of that amount, under contract in the [733] State of New Mexico, which showed very good oil potentialities.

He dwelled at great length on his antecedents with—or I should say, that he told me that he had gone with the Pan American Petroleum and Transport Corporation in his earlier days, that he had been with them continuously up until they had merged with the Standard Oil of Indiana, or the Standard Oil of New Jersey, I don't remember which, but it was one of the Standard Oil Companies; and he also had done work on the Mexican Petroleum Company, which was also one of the E. L. Doheny companies. He told me that he had vast experience in oil matters; that he had, as a matter of fact, written a great many oil contracts for Mr. Doheny, and Mr. Doheny thought he was very proficient in that type of business. There was other discussions, and then he said, "Are you willing to go to work on the deal?"

And I said, "It looks like you have got a very good setup, and I am especially impressed because of your background in the oil business, so I will go to work on the deal."

At that time he gave me about 20 names that were supposed to be stockholders of the South American Oil Fields. He gave me some right certificates similar to the ones that I just identified here, and he told me to go out and see what I could do. He said, "I have selected the names within a

(Testimony of Willard Eugene Warren.)

radius of 30 miles of New York, so you [734] might be able to go out and get yourself a nice sale before long.”

I took the literature that he gave me, and I went out——

Q. By Mr. Lucas: Just a moment before you start out on that. Did you come to any understanding with him? A. Yes.

Q. With regard to pay?

A. Yes. I asked him what arrangement we could make on the deal, what portion of the \$3.00 that I collected would be mine, and how much he expected. And he said, “We will go 50-50. In other words, 50 per cent of the money that you take in. I am furnishing the names, and I will furnish the delivery of the stock; all you have to do is make the sale and bring the sale to me.” He told me to have the checks made payable to the Wake Development Company, which was his personally owned corporation, and he would make arrangements to send the checks by air mail to California, have them collected as quickly as possible, and wire the funds back to that he could pay me as soon after the collection as possible. I told him that was quite agreeable.

I went out on the names. About a week after that I had another meeting with Mr. Danziger. I came up to his room at the hotel and I told him that the names I had called on were very poor, in the respect that most of them had moved, the addresses were bad, and those that I was able [735]

(Testimony of Willard Eugene Warren.)

to contact had been asked so many times to contribute funds toward the old South American Oil Fields financial arrangements, that they were thoroughly fed up and disgusted and didn't want to put any more money into oil propositions. And I said, "While your deal looks like it has a good set-up, the names you are giving me here are not very potent, and I wouldn't want to continue on the deal."

He said, "Well, Carter," he said, "have you any suggestions where I could get a good list of names that we could work the same arrangement on?"

And I said, "Well, I have an idea where I think I can get a list." I said, "I know a man by the name of Frank Palmer, and Mr. Palmer for the last three years has been selling stock in a company called the Great Eastern Natural Gas Company, they own properties up in Pennsylvania, New York State, and they have spent quite a bit of money drilling on those properties, but they haven't been successful in procuring any substantial amount of gas, and I wouldn't be surprised if I talked to Mr. Palmer about the deal that he might be interested in having some arrangement worked out between you and he that would give the stockholders of that company a right to buy the stock in your company." I asked him then what kind of an arrangement, though, could be made under the circumstances, "what kind of a contract could you contrive that would make such a proposition pos-

(Testimony of Willard Eugene Warren.)

sible?" He said, "Now, don't you worry [736] your head about that; I am a lawyer, I know how to arrange contracts, and as long as the other man is willing I can figure out some kind of an excuse to offer the stock. You just get the list and get the man, and I will work out all the details and arrangements."

I said, "As long as you feel that way about it I will see what I can do," and I left.

Later I contacted Mr. Palmer, and Mr. Palmer told me that——

Mr. Rose: Just a moment.

Q. By Mr. Lucas: We will have to skip what Mr. Palmer told you.

A. I see. Later I came back to—I called Mr. Danziger first and I told Mr. Danziger that I had contacted Mr. Palmer, that Mr. Palmer told me that he had turned over all the matters of the Great Eastern Natural Gas Company to his son-in-law, Mr. De Hart, but I told Mr. Danziger that I had made arrangements with Mr. Palmer to have Mr. De Hart meet me in the next day or so, and I would then come up to see Mr. Danziger and introduce Mr. De Hart to him and see what could be worked out. He said, "That's fine," he says, "bring him up any time."

In a few days I met De Hart, and I took him up to meet Mr. Danziger. It was at that time that Mr. Danziger sat down in his room and drew up in pencil writing on blank pieces of paper a tentative contract between him and Mr. [737] De Hart.



(Testimony of Willard Eugene Warren.)

I listened to what he said, and as near as I can remember the sum and substance of this contract was to the effect that for and in consideration of the Great Eastern Natural Gas Company furnishing a list of its stockholders, that the Trinidad International Petroleum would enter into an oil and gas purchasing contract of some sort which was to pertain to the acreage owned in the State of New Mexico. It seemed to be a contract that was drawn upon the event that oil was struck in New Mexico and was produced, and if the oil was produced, then the Great Eastern Natural Gas Company would have a right to buy that oil at a certain concession in price, or at a certain stipulated price which would make them a profit on resale.

Q. By Mr. Lucas: Now, I show you at this point—pardon the interruption, counsel, Government's Exhibit 82 in evidence, and ask you to glance at that and tell me whether or not that is the contract about which you have been testifying.

Mr. Rose: It obviously can't be. The witness has identified a number of penciled memoranda.

Mr. Lucas: I just want to check it. I don't know that it is. I want to know what the witness says about it, Mr. Rose.

The Witness: Yes, this seems to be——

Q. By Mr. Lucas: The copy of—— [738]

A. This seems to be the same wording that I heard Mr. Danziger dictate or talk about in the contract with Mr. De Hart.

I later looked at the contract at the time, and

(Testimony of Willard Eugene Warren.)

that appears to be just what I read after it was written.

Q. Very well. Proceed.

A. This contract was completed between Mr. De Hart and Mr. Danziger, and then I later met Mr. Danziger again. At that time I brought up some literature that I had acquired from Mr. Palmer about the Great Eastern Natural Gas Company, and I had a list of the stockholders, I think in the first list there was about 1200 names, I had the list in duplicate, I had an original and a carbon copy; then I asked Mr. Danziger what we were going to do in the way of a build-up for the deal.

He said, "Well, that seems to be a very simple matter." He says, "Now, the first thing you want to do is get a letter out similar to the one I sent to the South American stockholders," and he says, "we could very easily do that. Here, I will take this letter right out of my brief case and I will re-write it." And at that time he went into his brief case and he brought out the same letter, the type-written letter that I testified to heretofore, and he started to make changes on it, adapting it to the name of the Great Eastern Natural Gas Company instead of the South American Oil Fields Company. After he had done that, I looked at it and I [739] suggested other changes. I told him that I thought probably it ought to be a little more brief and a little more specific. And between the two of us we worked out a letter which was satisfactory to both of us. And he said, "Do you have any-

(Testimony of Willard Eugene Warren.)

one that can have this printed?" And I said, "Yes, I know a printer by the name of Carmen Gould downtown on Broad Street. They have done work for me before, and I believe they could get the letter out."

Then Mr. Danziger and I worked on a letter together, that was to be sent out by the Great Eastern Natural Gas Company from its office in Wilmington, Delaware. The plan was to first send out on the Trinidad International Petroleum's letter-head an inquiry, this inquiry was for the purpose of arousing curiosity on the part of the stockholders, and it had a perforated blank which they could tear off and state how many shares of stock they owned, how long they held it, and various other type of information.

I asked Mr. Danziger how he was going to handle this mail situation. And he says, "Well, that is very easy. We will just get a box here in the Grand Central Terminal, I will arrange that, I will get a box and we will have all the mail returned to that box, and then I can pick it up while I am in New York, and you can have the inquiries and you can go right to work on it."

Then after that it was to be followed up by a letter similar to the one that Danziger and I had both worked out [740] together, which I have referred to recently here, and that was to say, "We recently sent you an inquiry form."

Mr. Lucas: Now, I show counsel at this point some correspondence, and I ask you to wait just

(Testimony of Willard Eugene Warren.)

a minute, Mr. Carter, while counsel examines what I have shown him.

Q. By Mr. Lucas: I show you, Mr. Carter, two sheets of paper containing a great deal of handwriting, and each sheet is on the letterhead of Trinidad International Petroleum, and ask you, first, to tell me whether or not you can identify the handwriting on the first sheet of paper.

A. Well, I can say that this handwriting to my best knowledge and familiarity with it, and previous familiarity with the writing, it appears to be Mr. Danziger's. I would like to read this and see what it is.

Q. Let's look at the second sheet, and I will ask you a question with respect to the second sheet. Is that Mr. Danziger's handwriting?

A. Yes, that is Mr. Danziger's handwriting, to the best of my knowledge.

Q. Now, I call your particular attention to the second sheet, in red pencil, "use letter top on sheet attached;" is that Mr. Danziger's handwriting?

A. I remember this specifically being written. I don't remember him writing that in red, and I am not expert enough to say positively that that red is his handwriting. I think it looks like it, but I wouldn't want to [741] say definitely. I saw the other handwriting; I saw him write the other.

Q. All right. You said something about wanting to read that. Do you still want to?

A. Yes.

The Court: Is it long?



(Testimony of Willard Eugene Warren.)

Mr. Rose: About three pages.

Mr. Lucas: Two sheets.

The Court: It is about the middle of the morning, so we will take 10 minutes.

(Short recess was taken.) [742]

Q. By Mr. Lucas: Now, Mr. Carter, have you had an opportunity to examine the document you had in front of you during the recess?

A. Yes, I did.

Q. I think you testified that pen and ink writing there is in the handwriting of Mr. Danziger?

A. That is correct.

Mr. Lucas: I now offer this in evidence as government's exhibit next in order.

Mr. Rose: That is the pen and ink as distinguished from the red notation, is that it?

Mr. Lucas: Yes, as distinguished from the red notation on the top of the second sheet. The witness is unable to identify that.

Mr. Rose: Very well.

The Court: Admitted.

The Clerk: 100.

(The document referred to was marked as Government's Exhibit 100, and was received in evidence.)

Q. By Mr. Lucas: You mentioned a moment ago, Mr. Carter, something about an inquiry form being sent out that could be torn off——

Mr. Rose: Is this in evidence?

Mr. Lucas: No. I was just about to put it in.

(Testimony of Willard Eugene Warren.)

Mr. Rose: I had in mind the Tether file had gone in, and I assumed, naturally, that you had it all in. [743]

Mr. Lucas: My recollection—it is purely my recollection for what it is worth—is that it is 60.

Mr. Rose: In other words, it is part of——

Q. By Mr. Lucas: I show you, after having first shown to counsel, a form headed at the top “Inquiry Form” dated December 18, 1935, and ask you if the printed portion of that is a facsimile of the inquiry form about which you testified a moment ago.

A. This is the lower half of it that was torn off for the return. There was another part on the top of it originally, and that doesn’t appear here. This is just half. That, however, is the inquiry form that was returned, giving the information about the holdings and so forth that I testified about.

Mr. Lucas: Attached to this inquiry form identified by the witness, your Honor, is a handwritten letter signed H. L. Tether. We have a Tether file already in evidence. This handwritten letter I cannot identify in any way, but I offer the inquiry form, identified by the witness, either as government’s Exhibit next in order, or ask that it be attached and be made a part of the Tether file, because to this inquiry form there is appended a name “H. L. Tether.”

Mr. Rose: Let me understand you, counsel. Are you offering this particular document with the pen and ink notations thereon, or are you offering the

(Testimony of Willard Eugene Warren.)

printed portions of this paper to illustrate the testimony of this witness, [744] which is it?

Mr. Lucas: I would like to offer, of course, the entire document as it is now. If you are going to object, I will withdraw the offer and only offer the printed form, because the witness has identified the printed form, and I haven't interrogated him as to whether or not he knows the signature or how he received it and so forth.

Mr. Rose: I am not certain, your Honor, whether there has been any change in the foundation as to the time of this discussion. The witness has stated the preliminary discussions appeared in the early part of 1935. Now we are talking about some form of inquiry form which I note here has a date in December, 1935, which is an occasion, as the evidence reflects, when Mr. Danziger was in Europe; so I am objecting to this on the ground that there is no foundation laid as to authorship of this, that it is only part of a document, and that the same is irrelevant and immaterial. As to foundation, I would like to, if I may, your Honor, enlarge on that. There is no foundation as to the coming in esse of this particular printed form, and the whole of it is not before us, and there is nothing to indicate who transmitted this particular form and when it was transmitted, and what relation, if any, any of the respective defendants who are now on trial have to this segment or the whole of said printed document.

Mr. Lucas: Are you through?

(Testimony of Willard Eugene Warren.)

Mr. Rose: I think I covered it to the best of my [745] ability.

Mr. Lucas: Counsel evidently overlooked that the testimony in here is, by this witness, that he and Mr. Danziger sat down and concocted a letter that was to be sent out to the stockholders of the Great Eastern Natural Gas, and a part of that letter had a perforated bottom that was to be filled in and returned, and——

The Court: Admitted.

Mr. Lucas: ——the document, therefore, is complete in itself.

The Court: Admitted.

The Clerk: 101.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

(The document referred to was marked as Government's Exhibit 101, and was received in evidence.)

Q. By Mr. Lucas: I show you another document, after having previously shown it to counsel, a typewritten document in two sheets, both the first and second sheet containing some interlineations and handwriting, and I will ask you if you have ever seen that before.

A. Yes, I have seen this before.

Q. All right. In whose handwriting is this interlineation in the penciled and handwritten material that is on that?

A. The part here in the fifth paragraph is my



(Testimony of Willard Eugene Warren.)

[746] writing, "We set forth below," that is my handwriting.

Q. Very well. The word "copy," c-o-p-y, in whose handwriting is that?

A. I can't tell you. I don't know.

Q. It is not yours?

A. It is not mine. This is my handwriting in the next to the bottom paragraph, "Registration."

Q. You are referring to the word "Registration?"

A. The word "Registration" is my handwriting.

Q. On the second sheet there is not handwriting, but an obliteration; first, do you know anything about that obliteration?      A. I couldn't say.

Q. Below that you have indicated the word "Our," o-u-r?      A. That is my handwriting.

Q. What is the document? When was that——

A. This is part of the literature that was used in making the final copy, of which several letters, were written and revised several times. This is one of the revision copies in which corrections were made either by me or Mr. Danziger at the time we were drawing up the letters that were used in our sales campaign.

Q. Before it went out to the printer for printing?      A. That's right.

Mr. Lucas: I offer this document, these two sheets, [747] as the government's exhibit next in order.

Mr. Rose: I object to it on the ground that it is

(Testimony of Willard Eugene Warren.)

wholly irrelevant and immaterial, and no proper foundation laid.

The Court: Admitted.

The Clerk: 102.

(The document referred to was marked as Government's Exhibit 102, and was received in evidence.)

Q. By Mr. Lucas: I show you what has been marked heretofore as Government's Exhibit 41, for identification, a document on the letterhead of the Great Eastern Natural Gas Company, and ask you if you have ever seen a facsimile of that?

A. Yes, I have seen a facsimile of this form letter.

Q. Is that one of the documents about which you have been testifying?

A. This is one of the documents used in the series of build-up letters that were used on the Great Eastern Natural Gas stockholders.

Mr. Rose: I move that be stricken as a conclusion of the witness.

The Court: The answer and the question are both stricken. Ask the question again.

Q. By Mr. Lucas: Was that part of the literature that was mailed out—first, was that part of the literature that was prepared by you and Mr. Danziger and mailed out to [748] the Great Eastern stockholders?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness.

(Testimony of Willard Eugene Warren.)

The Court: You may answer.

A. At the time of my meeting with Mr. Danziger, my last meeting referred to, we discussed the various letters that we would create in this sales campaign and use in our stock selling plan, and one of the agreements that we entered into was that Mr. DeHart would send one letter from the Great Eastern Natural Gas Company of Wilmington, Delaware, which would, in sum and substance, confirm the various letters that I have described heretofore coming from the Trinidad International Petroleum Company, and would sort of confirm the situation.

At the time of my talk with him we talked about what this letter—how this letter should be written, and we came to certain agreements about it. I can't tell you now whether this letter was entered into between he and I at that particular meeting, but at one of our meetings we did agree on this letter.

Mr. Rose: I move that be stricken, your Honor, as a conclusion of the witness.

The Court: Motion denied.

Q. By Mr. Lucas: And was it afterwards sent out?

A. It was.

Mr. Rose: Just a second. I object to that as leading [749] and suggestive, no proper foundation laid.

The Court: He may answer. Answer again.

The Witness: This letter was sent out to all of

(Testimony of Willard Eugene Warren.)

the stockholders of the Great Eastern Natural Gas Company at various times.

Mr. Lucas: I now offer this exhibit in evidence, it having been heretofore marked 41, for identification.

Mr. Rose: Objection is had to this document on the grounds, severally, that no foundation is laid to show that this particular form of communication was, in fact, ever exhibited to any of the defendants on trial; there is no foundation laid as to when and where it was prepared, nor by whom. And in support of these objections I indicate to the Court that this form of document appears to have the mimeographed date of October 28, 1935, concerning which the testimony in this record reflects that it is at a period when Mr. Danziger was in England, and he was there long prior to the date of this letter, and remained there for almost two years thereafter, and that the same is incompetent and not binding on the defendants. This is an act of the Great Eastern Natural Gas Company.

The Court: I think a few dates would be handy now.

He had his first talk with Mr. Danziger when, Mr. Lucas?

Mr. Lucas: July.

Mr. Rose: That is not so. It was the early part of 1935 as this witness testified. [750]

Q. By Mr. Lucas: When was your testimony as to the date you met Mr. Danziger for the first time in New York?



(Testimony of Willard Eugene Warren.)

A. I couldn't be specific about that date, but it was the early part, my first visit with Mr. Danziger at the time I spoke about the South American oil fields was in the early part of 1935.

Q. What do you mean by the early part?

A. Well, the early part might have been April.

The Court: Does he know when?

The Witness: I can't be specific on that particular date.

The Court: Does he know when Mr. Danziger went to Europe?

Q. By Mr. Lucas: Do you recall approximately when Mr. Danziger went to Europe?

A. I think Mr. Danziger went to Europe either in July or August.

Q. Of '35?

A. That is to the best of my recollection.

Mr. Lucas: We are offering it on the testimony of the witness, who said that it was a part of the scheme that was talked over by Mr. Danziger and this witness before he left for Europe, and was to be sent out and was sent out, and this exhibit comes into the record and is here for identification through the testimony of the witness Skinner, I believe.

Mr. Rose: Your Honor, counsel is frequently speaking of schemes, schemes, and schemes. Your Honor has heard the testimony of the witness, and we are familiar with it. My objection goes to the fact that as I have indicated, without repeating myself,—the objection has not been passed on—this is not an act of the defendants.

(Testimony of Willard Eugene Warren.)

The Court: It is admitted.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

The Clerk: 41, for identification, in evidence.

(The document referred to was marked as Government's Exhibit 41, and was received in evidence.)

Q. By Mr. Lucas: Did you arrive at an understanding with Mr. Danziger as to your activities and compensation, if any, in the sale of the securities?

Mr. Rose: Object to the form of the question, your Honor.

The Court: He may answer.

Mr. Lucas: Withdraw it.

Q. By Mr. Lucas: Just state what, further, you did and said with Mr. Danziger with respect to the matter.

Mr. Rose: May we have some foundation laid here as to when this conversation or discussion was had and where?

Mr. Lucas: Yes.

Q. By Mr. Lucas: Giving the time, place, and persons present, Mr. Carter. [752]

A. Well, this conversation took place ten years ago, and it is impossible for me to be specific on the day and date, and even to the exact month; but it was in the early part of 1935, it might have been March, it might have been April, it might have been May, I was continually talking to Mr. Danziger over a period of time, and I cannot specifically state

(Testimony of Willard Eugene Warren.)

the exact time, but it was during the early part of 1935.

Q. All right. Now, pick up the thread of your thought and tell us what further happened between you.

Mr. Rose: I object to the form of the question as being too latitudinous. I thought he was endeavoring to lay a foundation for a conversation relating to compensation. I wish he would have him follow through on that so at least I can follow the testimony.

The Court: Since objection has been made, ask him a more specific question.

Mr. Lucas: All right.

Q. By Mr. Lucas: Mr. Carter, did you have a further conversation with Mr. Danziger with respect to compensation or a division of proceeds?

A. Yes, I did.

Q. State where, when it was and what was said by each of you.

A. The conversation took place in the Barbizon Plaza [753] Hotel in the early part of 1935, as I have stated before. When I first brought Mr. DeHart to Mr. Danziger, I told him that after Mr. DeHart had had his first conversation with Mr. Danziger and he left, I told Mr. Danziger that there would have to be another arrangement worked out between he and myself in respect to the financial arrangement as to the splitup of the commissions or the moneys that would be received from the sale of stocks to the Great Eastern stockholders; and at

(Testimony of Willard Eugene Warren.)

that time we entered into an agreement whereby I would receive one-third commission and one-third for an expense allowance, with the understanding that I would pay all the expenses and the salesmen's commissions out of the two-thirds to be derived from the sale, or in terms of dollars, two dollars out of every three dollars we received was to go to me, out of which I was to pay all expenses and to pay the salesmen's commission and so forth.

Q. All right.

A. Mr. Danziger said that that appeared to be a fair arrangement. And after we had completed our arrangements for sending out the literature, had agreed upon all the copy that was to be used in the approach to the Great Eastern stockholders, he asked me, "Have you any salesmen lined up, any possibilities of getting a crew of men, because we have quite a large list of names here to call on, and I want you to understand"—I am quoting Mr. Danziger now—"that I want to go to England, and [754] frankly, I am short on funds. I need money in order to put this Trinidad International Petroleum deal over. I have what I consider a very fine deal here, and I have some connections in England. If I can get over to England and have sufficient funds to defray my expenses, I believe I can arrange to get the entire company financed and to get the wells drilled that I want down in Trinidad, and that will make the deal a winner for everybody."

I told him that I thought I would be able to get



(Testimony of Willard Eugene Warren.)

together a crew of salesmen, that I had in mind certain men right then. And he said, "That's fine."

At a later date, somewhere along in, I believe now along in July of 1935, I brought to Mr. Danziger's room at the hotel a man by the name of Franklin—

Mr. Rose: Pardon me. What is the name?

The Witness: Franklin.

A. (Continuing): Before I went up to see Mr. Danziger at the occasion of our interview, his and my interview, I left Franklin downstairs and proceeded upstairs to see Mr. Danziger. I told him I had in the lobby a man who I considered to be one of the best security salesmen in the business, but I told him that this man was a tough proposition to handle. I told him, "At the present time he is engaged in selling oil royalties out of a firm down town by the name of Shearer & Company and," I said, "I think he would be a good man on this deal, providing we could hold him into line." [755]

He said, "Well, what do you mean by that?"

I said, "Well, he is known to make a lot of exaggerated statements, and he is not too careful about what he says about a deal."

Well, Mr. Danziger said, "I believe you can manage him all right, and I don't believe there is anything connected with this deal that a man could state very wrong. In fact, I don't worry about that; what I want to do is raise money right now, and it is up to you to get the money."

Well, I said, "I would like to introduce this fellow to you." So I went downstairs and I got

(Testimony of Willard Eugene Warren.)

Franklin and I brought him up. Franklin and myself and Danziger talked, and then we left. We started to sell the deal with about five salesmen. Franklin brought along one salesman by the name of Jack Beyers. He told me that Mr. Beyers——

Mr. Rose: Just a second. If I follow the witness, your Honor, I am under the impression that he is now about to relate a conversation between Franklin and Beyers, and I object to that on the ground it is hearsay.

Q. By Mr. Lucas: Let's omit those, Mr. Carter, unless they were in the presence of Mr. Danziger.

A. All right.

Q. May I interrupt you there? Was there anything said between you and Mr. Danziger with respect to how [756] receipts of money would be handled?

A. Oh, yes.

Mr. Rose: I think that has been asked and answered, your Honor.

The Court: He may answer.

Mr. Lucas: Not how they would be handled.

A. Yes. I asked Mr. Danziger how we would arrange to have the checks cleared. I asked him who we would have the checks made payable to. I asked him in what form or how we could give the proper identification to the salesmen that were making the calls on the stockholders, and he said, "Oh, I have provided all of that. I have the same kind of material that the salesmen are using on the South American Oil Fields deal, and all we have to do is to make whatever changes are necessary to fit the

(Testimony of Willard Eugene Warren.)

Great Eastern Natural Gas deal, and if we need some other material, just say so and we will have it.”

I said, “Well, let’s see what you have now.” And he showed me a Wake letter-head in which it stated that the bearer is a representative of the Wake Development Company.

Mr. Rose: Just a second.

Mr. Lucas: Not what it stated.

The Witness: Shall I proceed?

Mr. Lucas: No. Just a moment, please.

Q. By Mr. Lucas: I show you, after having previously shown to counsel—— [757]

Mr. Rose: Just a second. Pardon the interruption. Let me have the antecedent question, please.

(The record was read.)

Q. By Mr. Lucas: I show you, after having previously shown to counsel, a photostatic copy of the document on the letter-head of the Wake Development Company, and ask you if you have ever seen the original of which that purports to be a photostatic copy.

A. Yes, I had this personally.

Q. And do you know——

A. I had the original personally.

Q. And have you the original now?

A. No, I don’t.

Q. Do you recognize that as a true and correct photostatic copy of the original?

A. I do, because it has my name on it, too.

Q. And when you speak of your name, you are

(Testimony of Willard Eugene Warren.)

referring to the lowest name on the letter, that of  
“C. Cameron?”           A. That’s right.

Q. Is that one of the aliases which you used in  
connection with this deal?           A. That’s right.

Q. I direct your attention now, then, to the signature below the typed words “Wake Development Company,” the signature I believe is “M. Bishop;” whose signature is that?

A. That is Mr. Danziger’s writing. [758]

Mr. Lucas: I offer this in evidence as the government’s exhibit next in order.

Mr. Rose: Just a minute. I object to it on the following grounds: There is no proper foundation laid.

The Court: Admitted.

The Clerk: 103.

Mr. Rose: May an exception be noted, your Honor?

The Court: Exception allowed.

(The document referred to was marked as Government’s Exhibit 103, and was received in evidence.)

Q. By Mr. Lucas: Now, Mr. Carter, did you have any conversation with Mr. Danziger about Mr. Bishop or this name Bishop?

A. Yes, I did. When we were preparing the literature that was to be sent out, there was an envelope, a return envelope printed with the name of Bishop on it, and this envelope had an address on it, “Lock Box in the Grand Central Terminal, New York City;” we wanted to send out, or Mr. Dan-



(Testimony of Willard Eugene Warren.)

ziger and I talked it over and decided together to send out several hundred or about three hundred names of the literature immediately so as to raise the funds and get the salesmen working; so instead of sending the first letters back to the Wake Development Company, we sent them to a locked box in New York City, and the name was M. Bishop, or the name that appears on there.

I asked him at the time who Bishop was, and he said, [759] "He is just one of the men in our company, and you don't need to worry about that."

I never did know who Mr. Bishop was at any time, and I just assumed that there was some man by that name. I didn't know.

Q. You said a while ago that you asked Mr. Danziger about how the money was to be handled. You didn't tell us whether he answered or not.

A. He said, "You make all the checks"—he furnished irrevocable stock powers which stated on them that it gave the right to the Wake Development Company to accept any shares of stock in any company that the salesman might collect in making his sales, and sell them and apply the proceeds against the sale of the Trinidad stock.

Mr. Rose: Just a moment. Let me have the first three or four words of that, please.

(The record was read.)

Mr. Rose: I move that the answer be stricken on the following grounds: One, that the answer is not responsive to the question of any conversation, and is a conclusion insofar as it purports to estab-

(Testimony of Willard Eugene Warren.)

lish the granting of irrevocable stock powers; it is a conclusion of law and not the best evidence, for the reason that obviously that portion of the answer pertains to some writing and, therefore, it is not the best evidence.

The Court: Do you have one of them? [760]

Mr. Lucas: I haven't yet determined. I will stipulate that the answer may be stricken.

Q. By Mr. Lucas: The question was what was said between you and Mr. Danziger about handling the funds.

A. Well, our first conversation was that all the checks were to be made payable to the Wake Development Company.

Q. And how were they to be cleared?

A. Mr. Danziger said at that time that he had no means in New York to clear the checks, but that he would send them air mail to Los Angeles and deposit them in the account, or send them for collection through the Wake Development Company asking them to wire Fate, so that he could immediately draw the funds and have the funds re-wired to New York so we could pay the salesmen and get our override on these sales.

Q. Now, we will get back to this fellow Franklin or Kramer. What was that name?

A. Franklin was the name, but he used the name of Kramer.

Q. You had introduced him to Mr. Danziger and said something to Mr. Danziger about it. Can you pick up the thread of your thought from there?

(Testimony of Willard Eugene Warren.)

A. I thought I completed my testimony about that.

Q. All right. Did you avail yourself of the services of this man Franklin or Kramer? [761]

A. Yes, I did. Kramer and I had an understanding between us that we would split——

Mr. Rose: Just a minute. I object——

Q. By Mr. Lucas: Never mind about your understanding with Kramer. If it is some private deal between yourself and Kramer, we are not interested.

Did you avail yourself of his services?

A. Yes, I did.

Q. And did he make any sales?

A. Not immediately.

Q. When was his first sale?

Mr. Rose: I object to that as irrelevant and immaterial, and not constituting any issuable fact.

Mr. Lucas: It is a preliminary question, your Honor.

The Court: He may answer.

A. I can't tell you which salesman made the first sale, but there were a number of sales made.

Q. I am talking about the first sale by Franklin or Kramer, do you remember that?

A. Yes, I do.

Q. To whom was it made?

A. The first sale made by Franklin was Elizabeth Pierce.

Q. Where did she live?

A. South Amboy, New Jersey.

(Testimony of Willard Eugene Warren.)

Q. Do you recall the amount of that sale? [762]

Mr. Rose: Object to it as irrelevant and immaterial.

The Court: Is that one of the names?

Mr. Lucas: No; that is a preliminary matter, your Honor.

Mr. Rose: Your Honor, we have so many preliminaries here. I want to stay within the scope here of the matters that are purportedly an issue here. We can't sit here and be held to account for all the trespasses and sins of every person in the United States. Whatever transaction Kramer or Franklin had in 1935 with Pierce is certainly not the subject of any matter that your Honor is going to be called upon to review here.

The Court: What are you leading up to?

Mr. Lucas: This, as already indicated, is the first sale after the devising of this scheme. We affirm it was called to the attention of Mr. Danziger. It is the first transaction, and while it is not charged in the counts, we deem it as very definite proof of the scheme that we allege was concocted, and about which we have already testimony, and urge it for that reason, your Honor. I don't want to lay too much stress on it, and I will pass as rapidly as I can to the count witnesses, but inasmuch as it is one of the first sales I would like to go into it.

The Court: Was it made, by the way, before Mr. Danziger went abroad?

Mr. Lucas: It was probably initiated before he



(Testimony of Willard Eugene Warren.)

went [763] abroad. It was called to his attention before he left for Europe.

The Court: Proceed.

The Witness: The first sale made was to Elizabeth Pierce in South Amboy, New Jersey, for \$600.00.

Q. By Mr. Lucas: Now, tell us what was said between you and——

Mr. Rose: Just a moment. What was the question?

(The question was read.)

Mr. Rose: Your Honor, I object to this on the ground there is no proper foundation laid, it is too remote, and it doesn't pertain or relate to anything of which we are cognizant.

The Court: He may answer.

Mr. Rose: May an exception be noted, your Honor?

The Court: Exception.

The Witness: The first sale was made to a Great Eastern Natural Gas stockholder by Jack Beyers for \$600.00. The check was brought back to me at the Victoria Hotel in New York, and I immediately took the check over to Mr. Danziger. Mr. Kramer went along with me, or Mr. Franklin, as his real name was, he was using the name of Kramer as a salesman, his real name was Franklin. Franklin and I went together up to Mr. Danziger's room; we showed him the \$600.00 check, in fact, gave it to him. I told him that we had broken the ice, and the salesman stated the circumstances [764] under

(Testimony of Willard Eugene Warren.)

which he had received the check, indicated that the party who had given the check would be able to purchase a great many more shares of Trinidad stock. Mr. Franklin spoke up and said, "From the way this thing looks to me we will be able to sell the company right here. We won't have to go any further."

Mr. Danziger said, "Well, that's fine." He said, "I hope you get busy on this sale right away, because I want to get away to Europe, and if you can make any real substantial sale here it will help me to get my plans all completed to go abroad and to do the work I want to do for the company."

Mr. Kramer spoke up at that time and said, "Don't be too fast, Mr. Danziger. I can't go out there right away to make this sale."

Danziger said, "Why not?"

He said, "Because this woman is going away to visit one of her nephews for about thirty days, and it wouldn't be advisable to contact her where she is going."

Danziger said, "Well, make it as soon as you can."

He said, "Well, maybe I will be able to do it within twenty days, but I wouldn't want to risk a chance of trying to make the sale until she returns."

That was the end of that conversation at that particular time.

The Court: I must recess a little early, and I ask [765] your indulgence, gentlemen. My time is not entirely my own, being a visitor here, so in

(Testimony of Willard Eugene Warren.)

order to keep a schedule we will resume at a quarter of 2:00.

(Whereupon, at 11:45 o'clock a. m., a recess was taken until 1:45 o'clock p. m.) [766]

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Los Angeles, California,

Wednesday, January 24, 1945, 1:45 p. m.

WILLARD EUGENE WARREN

(WARREN C. CARTER)

resumed the stand on behalf of the defendants and, having been previously duly sworn, testified further as follows:

Mr. Lucas: Will you read the last portion of the witness' answer, Mr. Reporter?

(The record was read.)

Direct Examination (Continued)

By Mr. Lucas:

Q. All right. Then did Kramer go back to see this woman that you know of?

Mr. Rose: Objected to as leading and suggestive, hearsay, no proper foundation laid, and immaterial and irrelevant to any of the issues in this proceeding.

Mr. Lucas: The question can be answered yes or no.

The Court: He may answer.

(Testimony of Willard Eugene Warren.)

A. Yes, he did.

Q. By Mr. Lucas: All right. Did he make a sale?

Mr. Rose: I object to that as immaterial.

The Court: He may answer.

A. Yes, he did make a sale in the amount of——

Mr. Rose: Just a moment. I object to it as a conclusion of the witness, no foundation laid that he was even present.

The Court: He may answer. [767]

A. He did make a sale for 2,000 shares of Trinidad International Petroleum stock and notes.

Q. By Mr. Lucas: What was the amount of money involved, if you know?

Mr. Rose: I object to it as immaterial to any issue in this case.

The Court: You may answer.

A. The amount of the sale was \$6,000.00.

Q. By Mr. Lucas: All right. Did you talk that deal over with Mr. Danziger?

A. Yes, I did.

Q. What did he say to you and what did you say to him about that deal?

Mr. Rose: May we have a foundation?

Q. By Mr. Lucas: When and where was it said, if you recall?

A. Mr. Danziger and I at one of our talks in the hotel over business matters, we were having continuous consultations, at one of the meetings I told Mr. Danziger that Mr. Franklin or Kramer, as he was known as, had just completed a sale with



(Testimony of Willard Eugene Warren.)

Mrs. Pierce in which he had told 2,000 shares of the Trinidad units. Mr. Danziger said, "That's fine. How did he make the sale?"

I said, "It appears that he took in securities, principally the American Can Company stock."

And he said, "Well, is he going to turn those securities [768] over to me?"

And I said, "Now, I wanted to talk to you about that, Mr. Danziger. Have you any arrangement for the sale of those securities here in New York, how can they be sold?"

He said, "Well, I think that can be arranged." He said, "However, I would have no objections if you had some place to sell them."

And I said, "Well, Kramer has a broker down town that he has been doing business with for some time, and he says he can take them down town and get us the money on the sale within three days' time, and have the money back here."

He said, "Well, if he can arrange it that way it will be all right."

In three or four days, I don't remember the exact length of time, I met Mr. Kramer, and we both went back to see Mr. Danziger, at which time we turned over \$2,000.00 to Mr. Danziger, and Mr. Danziger issued the stock.

I am of the opinion, although I can't be too sure, that Mr. Danziger issued the stock in New York, but I can't be too sure of that. It was my opinion that he could issue security, or that he had the stock book there at the time and could issue the

(Testimony of Willard Eugene Warren.)

stock, but I am a little vague on that. It goes back a long time, it is hard to just exactly remember every detail.

Mr. Danziger on the occasion of this \$2,000.00 expressed his appreciation for our sales efforts and stated that he [769] wanted to make as many sales as possible before he departed for England, because he was now going to England within a very short length of time.

That was the conclusion of the—no, it wasn't. At that time Mr. Kramer stated in front of Mr. Danziger and me that this was by no means the end of the Pierce matter, that this woman could easily buy the whole capitalization, or some words to that effect. And Mr. Danziger said, "Gentlemen, that's fine, we certainly can use it at this time." And "when do you think you will be able to do that?" And Kramer made the remark, "Just keep your shirt on and don't be in too much of a hurry, I will get to it in due course, and if you are abroad we will see that you get the money, you don't need to worry about that."

Q. By Mr. Lucas: Did you make any more sales prior to Mr. Danziger's departure for Europe?

A. Yes, there was a few small sales to other people, the names of which are not in my memory now, because they were not of the size of the Pierce sale, and I don't remember them.

Q. What was done with the proceeds of those sales?

A. As each check was collected, we gave it to

(Testimony of Willard Eugene Warren.)

Mr. Danziger, and he would mail it off to Los Angeles and the money would be wired back and paid to us in cash by him.

Q. Do you remember approximately the date that Mr. Danziger left for Europe? [770]

A. It is very hard to fix dates. I haven't looked at a great many records, only just a very few as you know, and I can't definitely tell you the date that he sailed. In my opinion he sailed somewhere, I thought it was around in August, or maybe the very first of September, but I can't be sure.

Q. I see. Did you correspond with Mr. Danziger while he was in Europe? A. Yes, I did.

Q. Were any arrangements made between conversations, between you and Danziger, as to how you would carry on the business while he was in Europe?

A. Yes, we had a conversation about that before he left. I brought up the matter of him going to England, and there would be no one there to issue stock and no one to clear the checks; and during the course of conversation the subject was brought up that we might be able to make an escrow agreement with some small trust company or some fiscal agent who would act in that capacity. He asked me how I would like to have the arrangement made. And I told him as long as Mr. Palmer had been so co-operative as to give us the Great Eastern list, that I was under the obligation to him, personally, to see that he received some profit out of the transaction, that I had entered into a private arrange-

(Testimony of Willard Eugene Warren.)

ment with Mr. Palmer about it, which didn't involve him, and that Mr. Palmer at that time had an office [771] in Wilmington, Delaware, that he had been operating under the name of J. H. Dube. I suggested that it might be a good idea if the J. H. Dube & Company would enter into a contract with Mr. Danziger and the Wake Development Company whereby Danziger and the Wake Development Company would escrow a certain number of shares of stock under a certain provision; that upon the payment of \$1.00 per share they would issue us the stock. It was also agreed at the time that this escrow agent, which it later turned out to be the Commonwealth Trust Company, if my memory is correct, in Wilmington, Delaware, would also endeavor to collect the checks of the Wake Development Company, clear the checks, and then send on to Mr. Danziger wherever he designated, either to California or to London, his proceeds, and pay us ours according to our arrangement, which was \$1.00 for Mr. Danziger and \$2.00 for the sales agent, that is myself and the Dube Company.

I think at that time my name was eliminated out of the contract, and I think Dube acted as an agent for me in the transaction.

Mr. Rose: I move that be stricken as a conclusion of law and not the best evidence.

Mr. Lucas: I will stipulate it may go out.

The Court: Stricken.

Q. By Mr. Lucas: Was that arrangement talked over between you and Mr. Danziger carried out? [772]



(Testimony of Willard Eugene Warren.)

A. Yes, there was an arrangement. We went down to Wilmington, Delaware, I remember the trip very well because it was at that time Mr. Danziger told me about his former difficulties with his first wife, and I remember the trip very well because we rode in the car and talked about the matter. A contract was drawn up down in Delaware, that is about all I can say about that, and we came back to New York after that.

Q. Now, were sales made and cleared through that arrangement in Delaware?

A. Yes, there were some sales made.

Q. Did Kramer or Franklin afterwards go back to this lady Mrs. Pierce?

Mr. Rose: Your Honor, I object to it as wholly irrelevant and immaterial and no proper foundation laid, and it is not one of the issues in this case.

The Court: I consider it preliminary. Yes or no.

The Witness: Yes, he did.

Q. By Mr. Lucas: Did he make a sale?

Mr. Rose: Just a minute. Your Honor, I think there ought to at least be the preliminary foundations as to whether this witness was even present.

The Court: Do you know?

The Witness: Yes.

The Court: You may answer.

The Witness: About thirty days after Mr. Danziger had [773] gone, or thereabouts, I can't be too specific how long it was, Mr. Kramer told me that——

Mr. Rose: I object to that as hearsay.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: It is part of the plan, scheme, and part of which this witness has already testified, if the Court please, that Danziger said it was all right for him to go back there, and it was within the contemplation.

The Court: Yes, but let's shorten it. We don't want all this talk between the salesmen. Did he make a sale, and how much?

The Witness: I cabled Mr. Danziger in London about a month after that that an unfortunate circumstance——

Mr. Rose: Just a moment. I object to that as not the best evidence.

Mr. Lucas: Have you got the cable, Mr. Rose?

Mr. Rose: I am not subject to any inquiry here, unless you call me as a witness.

Mr. Lucas: I was trying to lay a foundation for the secondary evidence. We have no copy of the cable, your Honor.

The Court: You may answer.

The Witness: I cabled Mr. Danziger at an address that he had given about a month and a half after he had gone to England. I think there is a copy of the cable, I saw it somewhere in Mr. Mainland's papers.

Q. By Mr. Lucas: Among the papers that you have [774] given——

Mr. Rose: Just a second.

The Witness: Papers that I either gave you, or in the course of my papers.

Mr. Rose: If your Honor directs, I will go

(Testimony of Willard Eugene Warren.)

through the papers that I have here and endeavor to find—I will say frankly to the Court, since counsel insists on asking me questions here in open court, I am stating to your Honor it is my recollection among these maze of papers that I have that have been furnished me by Mr. Mainland and Mr. Danziger, that there appear to be some original cables in my possession. Now, if your Honor thinks it would expedite matters, I will take a look for this particular cable right now.

The Court: That wouldn't expedite matters.

Mr. Rose: I intend to go into it on cross examination, obviously, so counsel doesn't have to produce secondary evidence.

The Court: Do you have a copy there, Mr. Mainland?

Mr. Lucas: I don't think we have a copy, your Honor; at least, I am not conscious of it.

Mr. Rose: You ask Mr. Mainland, and he will tell you all these cables were in the possession of the Securities and Exchange Commission and were numbered by him, as I recall them, and some of them were returned to me when I was upstairs with Mr. Mainland going over certain documents. [775]

Do you remember that, Mr. Mainland?

Mr. Mainland: Not this stuff. It had nothing to do with it, that I know of.

The Court: Go ahead, finish your story.

The Witness: I cabled Mr. Danziger to the effect that an unfortunate circumstance had arisen regarding Mr. Kramer's obtaining some securities

(Testimony of Willard Eugene Warren.)

from Mrs. Pierce on a sale of Trinidad stock, which he had not turned over to me or had not made any arrangements for the delivery of the Trinidad stock, and I was not in a position to communicate with Mr. Kramer because I did not know where he was, and that I felt as a consequence there was going to be some trouble.

Q. By Mr. Lucas: Did you tell him the amount involved?

Mr. Rose: The cablegram will speak for itself.

A. I don't remember whether I stated the amount, I don't think I did, because at the time of my cable I don't think I knew exactly how much it was.

Q. By Mr. Lucas: Did you hear from Mr. Danziger in response to your cable?

A. I got a cable back from Mr. Danziger, I had several back from them, one of them stated to use my own judgment and to go to any length I thought was necessary in protecting the matters.

The Court: Do you have the cable? [776]

The Witness: No, I don't have the cable, I am just remembering it.

I then wrote Mr. Danziger in detail about this matter.

Q. By Mr. Lucas: Tell us, in substance, what your recollection is about what you communicated to him.

Mr. Rose: I object to it on the ground it is not the best evidence.

The Court: Does he have a copy of the letter?



(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Do you have a copy of the letter?

A. No, I wrote it in longhand. I didn't keep copies.

Q. By Mr. Lucas: Go ahead.

A. I wrote him that some time after he left, Mr. Kramer had visited Mrs. Elizabeth Pierce and, to the best of my knowledge, had obtained approximately \$35,000.00 worth of American Can preferred and common stock, and that the way I had found that out was that he had an engagement with me to call on Mrs. Pierce, which he had broken. And then when I called him and tried to get him to keep the appointment with me, he evaded the issue and said he would meet me at Mrs. Pierce's house in South Amboy, and to park my car outside, and that he would go in there with me and call on Mrs. Pierce. He didn't show up, and I came back to New York and I wrote him and told him. I then called Mrs. Pierce on the telephone, and without her knowing who it was, she quickly said, "Oh, is this you, Mr. Kramer?" And she said, "I have been worried about matters. You [777] know, someone else has been trying to get me on the telephone, and I didn't know what you wanted me to tell them." And then I said, "Did you tell them about the securities that you gave me?" And she said, "Oh, you mean about the three hundred shares of American Can?" I said, "Yes, that's right." And she said, "No, I didn't tell them a thing." And I then further told Mr. Danziger that that was the way I had found out that Mr. Kramer had been

(Testimony of Willard Eugene Warren.)

there and obtained this amount of securities; that after I had ascertained this, I came back to New York and called the Shearer office on Wall Street and asked for Kramer, and was told that he was not around.

Q. All right. Did you thereafter continue to operate under this Great Eastern deal while Mr. Danziger was in Europe?

A. No, I did not. During my communications with Mr. Danziger, I wrote him and told him that I thought there would be repercussions as a result of this deal, and that I thought it would be best not to try to sell or have any salesman out working at that time, and we discontinued sales right after that.

Q. Under the arrangement down in Delaware?

A. That's right.

Q. Were any substitute or other arrangements made between the two of you?

A. Since there were no sales made in that intervening [778] time, Mr. Danziger wrote me a letter from London in which he stated he wanted to discontinue the arrangement in Delaware because we had not continued to keep up the sales, and that in the event we wanted to continue any further sales that we would have to do all matters through the Wake Development Company's office in Los Angeles, California. He told me to communicate with Mrs. Faulkner; that if I wished to send out any letters or give any instructions to Mrs. Faulkner, it would be perfectly all right, that she would co-operate with us in every way in an endeavor to

(Testimony of Willard Eugene Warren.)

carry on the business just the same as if he was there.

I wrote to Mrs. Faulkner and to Mr. Danziger and told him that's the way we would continue in the future.

Q. On that arrangement did you make sales?

A. I can't remember any during the balance of 1935. There may have been some. I remember that during the course of my correspondence with Mr. Danziger I wrote him that I was going to go to Canada and try to make an arrangement with a broker up there to handle Trinidad International Petroleum stock. And then I did go to Canada. While I was in Canada, I circularized—I caused a concern up there to become interested in the Trinidad deal, and they sent out——

Mr. Rose: Just a moment. I object to that as hearsay.

The Court: Sustained.

Mr. Lucas: I show you this counsel.

Mr. Rose: No objection to the admission of this letter [779] in evidence.

Mr. Lucas: I didn't think there would be, but I did want to get it in.

Q. By Mr. Lucas: I show you, Mr. Witness, what purports to be a photostatic copy of a letter written on the stationery of the Park Lane Hotel, Picadilly, London, signed J. M. Danziger, and ask if you have seen the original of which that purports to be a photostatic copy. A. Yes, it is.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: I now offer this in evidence as government's exhibit next in order.

The Court: It is admitted.

The Clerk: 104.

(The document referred to was marked as Government's Exhibit 104, and was received in evidence.)

Q. By Mr. Lucas: During the time that Mr. Danziger was in England, and before he returned, did you contact a lady by the name of Elizabeth Parsons? A. Yes, I did.

Q. Do you know where she lived?

A. She lives in Pottsville, Pennsylvania.

Q. Do you recall approximately the time that you first contacted her?

A. Well, it was some time in the middle part of 1936 if my memory is correct.

Q. What was the purpose of your visiting her?

Mr. Rose: I object to it as immaterial.

Mr. Lucas: We allege it is part of the scheme.

Mr. Rose: Your Honor, I have heard this use of the word "scheme" here at least thirty times by opposing counsel but as I understand it we are supposed to be trying certain specific transactions set forth in this indictment, and if we are going to try every transaction had when a man is in England, and all of that, then we are going to clutter up this record with so many transactions that are not pertinent and relevant we will lose sight of it.

The Court: Is Parsons in the indictment?

Mr. Lucas: Yes, the first count.



(Testimony of Willard Eugene Warren.)

The Court: Is it in the indictment?

Mr. Rose: I don't recall it.

Mr. Lucas: The Parsons transaction is in the first count of the indictment.

The Court: Let's not fool around like school children. If it is in the indictment, it is there. Do you want the indictment to read it?

Mr. Rose: No, your Honor; I have a copy of it.

Mr. Lucas: If you are thinking about the date of the first count in the indictment, don't think I misled you. The Parsons transaction is in the first count is what I said. An offense on those checks would obviously be outlawed.

Mr. Rose: That is exactly what I had in mind.

Mr. Lucas: I think the Court understood when I said [781] the Parsons transaction is in the first count.

The Court: Have you read the indictment?

Mr. Rose: I have, but not all the words.

The Court: Do you want to assure yourself that Parsons is mentioned in the first count?

Mr. Rose: Yes, I would, your Honor, if you will permit it.

The Court: State your theory.

Mr. Lucas: I wanted to go to the very beginning of the transaction, your Honor. I think it is only proper and appropriate.

The Court: You may answer.

The Witness: Where did I leave off?

(The question was read as follows: "What was the purpose of your visiting her?")

The Witness: To make a sale.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: All right. I show, you counsel, two letters, carbon copies of letters.

Q. By Mr. Lucas: Was the last question: "Did you have correspondence with Mr. Danziger while he was in Europe concerning the Parsons matter?" or I will ask it to you now. Did you?

A. I received some letters from Mr. Danziger about it.

Q. All right. Then, I take it the answer is you had correspondence with him? [782]

A. Yes.

Mr. Rose: Just a minute. Are you testifying now, counsel?

Q. By Mr. Lucas: I show you, after having first shown to counsel, two letters, the first one on a pink sheet, and ask you if you have seen that before.

A. Yes, that's right, I have seen this before.

Q. Now, I show you the next one and ask you if you have seen that one before.

A. Yes I have seen this before.

Q. Referring now to the letter that you hold in your hand, the second one I showed you, from whom did you receive it?

A. I received this letter from Alda Faulkner, Los Angeles, Wake Development Company's office.

Q. Having reference now to the pink sheet which I first showed you, when did you receive that with respect to the other letter?

A. Well, I received it along with it. It is a copy of a letter that was written——

(Testimony of Willard Eugene Warren.)

Q. The pink sheet——

A. (Continuing): —by Mr. Danziger in England.

Q. The pink sheet was enclosed with this?

A. That's right.

Mr. Lucas: I ask that these two letters be introduced in evidence as the government's exhibit next in order as [783] one exhibit.

Mr. Rose: To which objection is had on the ground that no proper foundation has been laid; they are not binding on the defendants.

The Court: They are admitted.

Mr. Rose: May an exception be noted, your Honor?

The Court: Exception.

The Clerk: 105.

(The documents referred to were marked as Government's Exhibit 105, and were received in evidence.)

Q. By Mr. Lucas: Now, I show you, after having first shown to counsel, another letter on the stationery of Park Lane Hotel, Piccadilly, London, starting out, "My Dear 'Old Timer' ", and ask you if you have seen that before. A. Yes, I have.

Q. From whom did you receive it?

A. I received it from Mr. Danziger. To the best of my memory, I received it in Philadelphia.

Mr. Lucas: I offer this in evidence as a government's exhibit, to be made a part of the last exhibit, if there is no objection, because it is related

(Testimony of Willard Eugene Warren.)

to the same subject matter as the two preceding letters.

The Court: It will be attached.

The Clerk: Part of 105.

(The document referred to was marked and made of Government's Exhibit 105 in evidence.) [784]

Q. By Mr. Lucas: After Mr. Danziger came back from London, didn't you meet him in New York? A. Yes, I did.

Q. And did you have any conversation with him? A. Yes, I did.

Q. What did he say to you and what did you say to him?

Mr. Rose: Can we find out when this is, where it is?

Q. By Mr. Lucas: When did you first meet him after he came back?

A. I believe I met him in the lobby of the Barbizon Plaza Hotel.

Q. Up to that time, if you recall, had you made any sale of securities to Mrs. Parsons?

A. Yes.

Q. Do you recall—— A. Several sales.

Q. You made several sales, all right. Can you recall the first one? A. Yes.

Q. How much was it?

A. The first one was \$500.00.

Q. How much was the second one?

A. Approximately \$3,000.00.



(Testimony of Willard Eugene Warren.)

Q. And did you have another sale before Mr. Danziger returned? [735]

A. Yes, I think there was another one for \$4,000.00.

Q. What did you do with the proceeds of these sales when you took them in?

A. On each occasion I would communicate with Los Angeles, the Wake Development Company, and advise them that I had made a sale, and how much stock they were to deliver to Mrs. Parsons on the sale. I believe on the first sales that I asked them to send the stocks that would cover the Parsons sales to me under the name of Edwards, as I wished to deliver them to Mrs. Parsons as coming from me.

Q. You were using, then, the alias of Edwards in the Parsons transaction?

Mr. Rose: Just a second.

Mr. Lucas: I will withdraw the question.

Mr. Rose: Wait a minute. I want to clear up a point on the record right here. I take it the antecedent to the sales about which inquiry has been made here were those made prior to the return of Mr. Danziger from England, is that correct? Is that what the record shows here?

The Court: Can you tell him?

Mr. Lucas: Yes, I think it is right, that is my recollection of the record.

The Court: The sales were made while he was in England?

(Testimony of Willard Eugene Warren.)

Mr. Lucas: Yes.

Mr. Rose: I just want to be sure I understood that.

The Court: That is so, is it? [736]

The Witness: That's right.

The Court: Continue.

Q. By Mr. Lucas: Please tell me, Mr. Carter, was the money for these sales that you have been testifying about——

Mr. Rose: Just a minute. Excuse the interruption.

Mr. Lucas: Yes.

Mr. Rose: I wanted to address to your Honor a motion to strike the conclusion of this witness in respect to some communication that he said he sent to Los Angeles while Mr. Danziger was in England. He incorporated that in his recital here, and I submit that if there was any such communication that would be the best evidence; and, furthermore, that the same has no foundational facts here to make it relevant, pertinent, or binding on the defendants now on trial.

The Court: Did you keep copies of any letters that you wrote, Mr. Witness?

The Witness: Well, I can't state that I have any on hand now. There was some papers that I did turn over to Mr. Mainland,——

The Court: You don't have any now?

The Witness: (Continuing) —pertaining to this, and I don't have any in my possession. The

(Testimony of Willard Eugene Warren.)

only papers I had I turned over to Mr. Mainland.

Mr. Lucas: We have a complete file—not a complete [737] file, but we have many papers here, your Honor, which I propose to get in as I go along covering the transaction.

The Court: Wherever he talks about a letter, and you have a copy of it, you show it to counsel and put it in the record.

Mr. Lucas: Oh, yes, without a doubt I will.

The Court: Continue. Motion is denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. By Mr. Lucas: I didn't understand from your testimony, Mr. Carter, whether——

The Court: He met him in the lobby of the hotel.

Q. By Mr. Lucas: No. On this Edwards transaction, whether this money, these three or four or five thousand dollar checks you are talking about as having sold transactions with Mrs. Parsons, whether that money was sent to Los Angeles or received by you?

A. The first sales that were made to Mrs. Parsons were made by me personally, the first three sales that were made were made by me personally. I sold the Trinidad International Petroleum stock by telling her that I had a connection with the Trinidad International Petroleum people, and that I represented their fiscal agent the Wake Development Company. I told her that my name was Ed-

(Testimony of Willard Eugene Warren.)

wards, and that as a result of my connections I was in a position to allow her to buy this security and to give her a certain [788] number of shares of stock in that company. I showed her all of the literature which I had in my possession, which I had received previously on the Great Eastern deal, to substantiate the fact that I did have some connection with the company. And at that time I wrote in detail to the Wake Development Company office, Alda Faulkner, and told them what I was doing.

Mr. Rose: Just a moment. I now move the Court that the answer of this witness be stricken on the following grounds, severally: One, that there is no foundation laid to show that this witness was ever authorized to make the declarations and statements he now asserts to have been made to a Mrs. Parsons at occasions when Mr. Danziger was in London and the corporation's representatives were out here in California; that the same is hearsay, that any of the antecedent understandings or advices or directions asserted and testified to by this witness antecedent to these conversations, necessarily do not authorize the statements and declarations this witness asserts to have made outside of the presence and without the knowledge of the defendants, and for that reason they are hearsay and incompetent.

The Court: Motion denied.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

Q. By Mr. Lucas: Now, tell us to the best of



(Testimony of Willard Eugene Warren.)

your [789] recollection all you said to Mrs. Parsons and anything you showed her.

A. I showed Mrs. Parsons a paper which I had received from London from Mr. Danziger, and I believe the name of the paper was *The London Financial Times or News*, or something like that, I don't remember the exact name, Mr. Danziger sent me quite a few papers from London, telling me that I would know how to use them in the sale of Trinidad stock. And I showed her a number of stocks in the oil list of this paper which had the name "Trinidad" connected with them; one of them was "Trinidad Apex", the other one was "Trinidad Leaseholds", and the other one was—several other Trinidad stocks, and I told her that the company that I was selling her was headed by a former group of people of the Pan American Petroleum & Transport Company, and the Mexican Petroleum Company; that the stock had in former years a very high rating; that all of these men that were formerly connected with the Mexican Petroleum Company and the Pan American Petroleum & Transport Company were now directing their efforts toward the exploitation of oil in Trinidad, British West Indies, through this Trinidad International Petroleum Company; that the President of the company was now in England attending to the financing, large financial operations for the company; that I had personally been in touch with him numerous times; that I knew him personally and that I was [790] doing certain work for the com-

(Testimony of Willard Eugene Warren.)

pany; and that these shares which I was allowing her to buy was an inside arrangement, and the price she was getting would be considerably lower than what the stock could be sold for on the London securities market.

Q. All right. In this Parsons transaction, were you taking any stock in from her?

A. Yes, I took in 3,000 shares of Lamaque Contact gold stock.

Q. Do you recall any others?

A. I took in another stock which she owned, which had no market value, called Golden Quebec Mines Limited.

Q. What credit arrangement, if any, was allowed her on that?

A. I allowed her a credit, as near as I can remember now, of \$500.00 for her Golden Quebec stock, providing she paid \$500.00 in cash on a thousand dollars worth of stock, at the rate of \$7.00 a unit.

Q. After Mr. Danziger returned from Europe, did you make another sale to Mrs. Parsons?

A. No, I didn't make a sale.

Q. Did someone under your direction contact her?

Mr. Rose: I object to that as leading and suggestive, calling for an opinion and conclusion of the witness, not the best evidence.

The Court: You may answer. [791]

A. I arranged to have a sale made.

Q. What did you do now?

(Testimony of Willard Eugene Warren.)

Mr. Rose: I object to that as calling for hearsay.

The Court: You may answer.

A. When Mr. Danziger came back from England, or previous to the time that Mr. Danziger had come back from England, he had written me about his desire to put over a nice sale upon his return to New York, and he further asked me if there wasn't something that I could do further in the Parsons matter; that he would be very willing to cooperate and help in any way that he could. So when he did come to New York, I brought the subject up that I had made an arrangement to have a salesman call on Mrs. Parsons and make a sale. I told him that I had made so many visits to Mrs. Parsons during the course of several sales to her, that I had exhausted my own imagination to create any more sales talk, and that I figured that it was a good idea if I interjected a new personality into the picture.

I told him I had found a man by the name of Joe Robbins, who I thought would be just the type of man that would appeal to Mrs. Parsons. I told him that we had talked it over and decided that Mr. Robbins would go up there and state that he was a direct representative of Mr. Danziger's from England, and that he represented a financial agent of Mr. Danziger's by the name of A. R. Winslow, and that Winslow had an option or controlled a [792] selling group of a certain number of shares of stock, and that she could purchase a block of that

(Testimony of Willard Eugene Warren.)

stock, which would be considerably below what the stock was selling for in the English markets. As a matter of fact, we had some receipts made, printed, under the name of "A. R. Winslow".

Then Mr. Robbins went up and made the sale and came back, there wasn't any definite amount set on, the idea was to make the sale for \$10,000.00, but when Mr. Robbins came back he had a check for \$7,000.00 made payable to A. R. Winslow, who was supposed to be the fiscal agent.

Q. Was A. R. Winslow a real person?

A. There was no person by the name of A. R. Winslow, to my knowledge.

Q. You mentioned the \$7,000.00 check. I show you Government's Exhibit 11——

Mr. Lucas: I notice, Mr. Clerk that this is marked for identification. Is that in accordance with everybody's record? I had an idea that it was in evidence.

The Clerk: It is marked in evidence January 16th.

Mr. Lucas: Your record is that it is in evidence, is that right, Mr. Clerk?

The Clerk: Yes, that's right.

Q. By Mr. Lucas: I show you Government's Exhibit 11, being a check signed "Elizabeth Parsons" and payable to "A. R. Winslow", and ask you if this is the check which you have just been testifying about? [793]

A. Yes, this is the check.

Q. When and where did you receive that check?



(Testimony of Willard Eugene Warren.)

A. Well, I received the check in the Imperial Hotel from Joe Robbins.

Q. What did you do with it?

A. Joe Robbins was with another friend of his who had brought him into the picture with me, and they brought the check unendorsed to me, and I said, "Well, you better endorse the check, and I will see that the money is collected on it." So they took the check and went over to the writing desk of the hotel, and I don't know which one did write the signature, but one of them endorsed it.

Q. Then, what did you do with the check?

A. Well, frankly, I am just a little bit uncertain what I definitely did with this check.

Q. Give us your best recollection of the transaction.

A. Well, my best recollection is that I gave it to Mr. Danziger who agreed to send it by air mail to Los Angeles, California, for collection right away. The only alternative to that could have been that he told me to mail it out there, instead of him.

Mr. Rose: I move that be stricken as purely an opinion, surmise, and conjecture on the part of this witness.

Mr. Lucaš: I will stipulate that the answer beginning with "The only alternative" may be stricken.

The Court: Stricken. [794]

The Witness: To the best of my recollection, I gave the check to Mr. Danziger.

(Testimony of Willard Eugene Warren.)

The Court: Does it bear the endorsement of the Wake Company?

Mr. Lucas: Yes.

The Witness: The understanding was that this check would be collected through the Wake Development Company, and the proceeds would either be wired back to Mr. Danziger or to me.

Q. By Mr. Lucas: Well, at any rate, did you participate in the proceeds of the check?

A. Yes, we did.

Q. How was that \$7,000.00 check divided?

A. As near as I can remember, this money was on a slightly reduced proportion to the regular one-third that went to Mr. Danziger. I think he took less than one-third of the \$7,000.00, due to the fact that I had explained to him that there were two men in the deal besides myself that had to be paid off in the deal, therefore I figured that under those circumstances he should bear a part of that pro rata expense in making the sale. And as near as I can remember, I think that Mr. Danziger got in the neighborhood of \$1600.00 or \$1700.00 out of this \$7,000.00.

Q. By Mr. Lucas: And you and who else——

A. The rest of the proceeds was split up equally between three men. [795]

The Court: What three men, Mr. Lucas?

Q. By Mr. Lucas: Yes, between what three men?

A. Mr. Robbins, Mr. Shaeffer, and myself.

The Court: Who is Mr. Shaeffer?

(Testimony of Willard Eugene Warren.)

The Witness: Mr. Shaeffer was the man that brought Mr. Joe Robbins to me to make the sale.

The Court: Was he one of the two men?

You ask the questions.

Mr. Lucas: Yes.

Q. By Mr. Lucas: Was he one of the two men that were in on the deal?

A. Yes, only insofar as he originally was contacted by me to get a salesman who would be able to make this sale to Mrs. Parsons. I had described that I needed a certain type of man to make the sale.

The Court: Was he one of the two men who endorsed the check?

The Witness: He was one of the two men, and I don't know which one it was that endorsed the check, and I didn't ask them.

Mr. Lucas: I show you, counsel, before I show it to the witness, several sheets of paper here, and ask you to look at them before I show them to the witness.

Q. By Mr. Lucas: I show you, Mr. Carter, after having shown to counsel, a series of letters here, the top one of which bears the date October 10, 1939, at the top [796] of the page in a penciled notation is the word "Wake"; do you know in whose handwriting that is written?

A. I think it is Mr. Danziger's. I can't—

Mr. Rose: What is the answer?

Mr. Lucas: "I think it is Mr. Danziger's".

(The answer was read.)

(Testimony of Willard Eugene Warren.)

Mr. Rose: Let him finish the answer.

The Court: The answer is stricken.

Q. By Mr. Lucas: Go ahead.

A. In the best of my opinion, that is in Mr. Danziger's handwriting.

Mr. Rose: I move that be stricken as incompetent.

The Court: Stricken.

Q. By Mr. Lucas: I show you the initials "JMD" at the bottom of the letter, enclosed letter, on the second page, in whose handwriting are those initials? A. That is Mr. Danziger's.

Mr. Rose: Just a moment, counsel. You exhibited to me that group of papers that are now before the witness. Those are papers that, manifestly, cannot be correlated; one is dated some time in '39, and there are others in the early part of '37. It is pretty difficult for me to maintain a record here with this sort of inquiry. You attached them together as if they all applied to one particular transaction or one occasion.

Mr. Lucas: The correlation of those things is [797] difficult, Mr. Rose, but I think I am equal to the occasion, and I——

Mr. Rose: I hope so.

Mr. Lucas: —and as I interrogate the witness, if I am not, an objection will undoubtedly take care of it.

What was the answer to the last question, Mr. Reporter?

(The answer was read.)



(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Still directing your attention to those first two sheets of paper, I call your attention to the fact that there has been cut out, apparently by scissors, something from the first sheet, and immediately below the cut out portion there are the words, "Dear Mrs."; do you know who cut that out?

A. Well, I had papers in which I had cut out a number of names——

Mr. Rose: Just a moment. I move that be stricken as not responsive. The question is simple enough. Does he know who cut that particular thing out?

The Court: Answer yes or no, if you can.

A. May I ask where you received this paper?

Q. By Mr. Lucas: I received it from Mr.——

Mr. Rose: Just a second. If you want to testify, submit to cross examination.

The Witness: If this is part of the papers that I furnished you, all of the names that were cut out were cut out by me. And if this paper was furnished to the [798] Securities and Exchange Commission by me, all the names had been previously cut out.

Mr. Rose: I move it all be stricken on the ground it is incompetent and immaterial.

The Court: Do you have a witness who will identify these as having been received that way?

Mr. Lucas: I think I received them.

The Court: You may have to be sworn.

Mr. Lucas: I now make a statement to the Court that I received the documents in the posses-

sion of the witness from his attorney, Mr. Peterson.

The Court: You may be sworn.

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V. P. LUCAS,

called as a witness, having been first duly sworn, was examined and testified as follows:

The Court: Repeat the statement, counsel.

Mr. Lucas: I now state I received the documents in the possession of the witness, and about which he is testifying, from his counsel, Mr. Peterson, about four or five days ago.

The Court: Do you want to question Mr. Lucas, Mr. Rose?

Mr. Rose: I don't think so, your Honor. I would have been willing to accept his unsworn statement. The only point is that it appears now that he got it not from this witness, but from some other person, four days ago, as he [799] said. This case has been on trial longer than that.

Mr. Lucas: I said four or five days ago, and I think it is quite accurate.

The Court: Continue.

(Witness excused.)

WILLARD EUGENE WARREN

(WARREN C. CARTER)

resumed the stand as a witness on behalf of the government and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. You gave certain papers to your counsel, did you?      A. I did.

Q. And——

A. I cut out the names of all the names and addresses of nearly all the ones I gave to him; and I cut the name and address out of this letter, and this is one I sent to Mrs. Parsons.

Mr. Rose: I move the latter part of it be stricken as a conclusion of the witness.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

Q. By Mr. Lucas: I show you another letter, being a yellow second sheet bearing at the top the words "Copy" and the salutation [800] "My Dear Mr. Danziger", and call your particular attention to the penciled notation at the bottom of the page reading as follows:

"OT, How about letting the friend on by assignment of right", and ask you in whose handwriting that is.

A. Mr. Danziger's.

Q. And from whom did you receive that letter?

(Testimony of Willard Eugene Warren.)

A. From Mr. Danziger.

Q. And there is cut out of this letter a slot, apparently cut by a scissors, immediately above the cut out portion is the word "Sincerely" and immediately below, in typing is "Pottsville, Pa"; what name was in there before it was cut out?

Mr. Rose: I object to it on the ground it is not the best evidence.

The Court: You may answer.

A. Elizabeth Parsons.

Q. By Mr. Lucas: I show you another letter, being a yellow second sheet bearing the date at the top April 26th, without any year, and this at the bottom contains a writing, handwriting, penciled writing, as follows: "Sat. noon OT, nothing in up to Sat noon—Bank of America phoned"—something that is illegible? A. "they".

Q. "phoned they had an eastern"—[801]

A. ——"inquiry."

Q. ——"inquiry as to the market value of TIP. I said I know of sales in NY and abroad at around par \$5.00. Hope for some luck for"—can you help me out on that? A. "for a sale."

Q. ——"for us all," I believe.

A. "for us all."

Q. "Regards JMD." I will ask you in whose handwriting that is. A. Mr. Danziger's.

Q. From whom did you receive that?

A. I received that from Mr. Danziger.

Q. Now, I want to call your attention to the typed words at the bottom of the first letter, there



(Testimony of Willard Eugene Warren.)

being on this second sheet two letters; directing your attention to the first typing on the bottom of the first letter, there is "RFMK" in typing, and beneath that in handwriting there appears written out "Thompson;" do you understand what that means?       A. Yes, I do.

Q. What is that?

A. That is a code. RFMK is a code which represents the name "Thompson" that had been assigned to that particular code, RFMK.

Q. What is this code? Where did it originate?

A. During my communications with Mr. Danziger, at [802] one period I suggested we use a code so as not to disclose the identity of people's names or prospect's names that might appear in telegrams that we sent backwards and forwards a great deal during our negotiations. The first code used was the entire alphabet, substituting the second letter for "A" or the third letter for "A," I don't remember exactly which, but it was in one of those orders. And then after we had used that for some time, because of its difficulty in working it all out, Mr. Danziger wrote me a letter and suggested that he had a better plan, that he would take a series of code words from the International code book, or some code book that he had, and send them to me, and then I could set up alongside of the codes the various phrases which I would most frequently use in contacting him, and they would represent those phrases. Later we decided that we would also use those code words to designate a cer-

(Testimony of Willard Eugene Warren.)

tain name, especially where where we had occasion to refer to that name more than once.

Q. All right. Calling your attention to the second letter, now, there is typed the word "Elizabeth" and immediately after the word "Elizabeth" "NYPQMLQ;" can you tell me whether that was part of the code supplied by Mr. Danziger, or was that on the basis of the first code? [803]

A. Well, evidently that is from the third. N would evidently represent P, and that would be N, O, P would be the third letter. If N represents P, it has the identical number of letters in it as the Parsons name. So, each letter, counting three ahead, represents, spells out the name "Parsons."

Q. That is using the letter N as the first one?

A. Yes.

Q. You say "N O P," and "N" then stands for "P?"

A. That's right.

Q. "Y" stands for "A" counted two ahead, "Y" is "A?"

A. That's right.

Q. And so on until you spell out the name?

A. That's right.

Q. All right. Then I show you the next letter bearing date of November 2nd, 1937, and signed with the name of "A. Faulkner;" can you tell me whether that is Mrs. Faulkner's handwriting or Mr. Danziger's handwriting?

Mr. Rose: Let me take a look at it and I will tell you.

The Court: 15 minutes.

Mr. Lucas: Thank you, your Honor.

(Testimony of Willard Eugene Warren.)

(A short recess was taken.)

Q. By Mr. Lucas: Now, Mr. Witness, I show you a letter that we alluded to just before the recess, dated November 2nd, 1937, and call your attention to the name [804] "A. Faulkner," and ask you to tell me from whom you received the letter.

A. I received the letter from Mr. Danziger.

Q. Do you know whether the wording at the very top of the letter on the first page, where it says "T.I.P. letterhead" is in the handwriting of Mr. Danziger or Mrs. Faulkner?

A. I believe it is Mr. Danziger's.

Q. And the signature "A. Faulkner?"

A. I am almost certain that is Mr. Danziger's handwriting.

Q. Did you cut or tear out the name of the person that was at the head of that letter?

A. Yes, I did.

Q. What name was there?

A. May I look at the letter?

Q. Yes.

A. This is the letter, a copy of which was sent to me by the Wake Development Company, in which Mr. Danziger stated that the original went to Mrs. Parsons.

Mr. Rose: I move that be stricken as not the best evidence, and a conclusion of the witness.

The Witness: The name Parsons appeared at the top.

The Court: Admitted.

Mr. Rose: Exception.

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: I show you a yellow second-sheet, [805] legal size paper, the date of which is June 21st, 1937, and ask you if you have seen that before, and if so from whom you received it?

A. I received this from Alda Faulkner from the Wake Development Company.

Mr. Lucas: I now offer in evidence the six letters that this witness has been testifying about. I offer them as one exhibit, and if no one has any objections I will ask that they be attached to and become a part of Exhibit 85, which I believe to be the exhibit that has all of the correspondence of the Parsons deal that has heretofore been offered in evidence.

The clerk calls my attention to the fact that there is an 85-A and an 85; I offer this, then, as 85-B.

Mr. Rose: I noticed when you handed these to the witness there was an envelope that was addressed to one Carlton that you have in your hand; was that a part of this group?

Mr. Lucas: No. I just learned from the witness what that was, and I am just about to finish up on it and account for it, Mr. Rose.

Mr. Rose: I am objecting to this present offer on the following grounds, severally: One, that no proper foundation has been laid; that the same are incompetent; furthermore, they are immaterial.

The Court: They are admitted. [806]

The Clerk: 85-B.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.



(Testimony of Willard Eugene Warren.)

(The documents referred to were marked as Government's Exhibit No. 85-B, and were received in evidence.)

Mr. Lucas: Counsel, you asked me about the envelope.

Q. By Mr. Lucas: I now show you, Mr. Carter, an envelope bearing the legend at the top "Via: 'Empress of Britain'," which is apparently interlined or scratched through, addressed to George Carlton, Esquire, Hotel Adelphi, Philadelphia, Pennsylvania, U. S. A., "Please hold," and ask you if you received that envelope through the mail? A. I did.

Q. From whom?

Mr. Rose: I object to that as calling for a conclusion of the witness.

The Court: Did he get it in response to something?

Mr. Lucas: I am going to tie it into one of these letters right here.

The Court: He may answer.

The Witness: Yes, I did receive this from Mr. Danziger with a letter in it.

Q. By Mr. Lucas: Now, directing your attention to the letter which is a part of Government's Exhibit 105, being a letter dated July 1st, or first of July, Park Lane [807] Hotel, I will ask you if that is the letter which was enclosed in this envelope.

A. Yes, this is the envelope that I received that in.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: I ask now that the envelope be made a part of Exhibit 105 in evidence.

The Court: Admitted.

(The envelope referred to was made a part of Government's Exhibit No. 105, and was received in evidence.)

Q. By Mr. Lucas: Mr. Carter, a moment ago in your testimony you said you had made some sales to Mrs. Parsons while Mr. Danziger was in England, and you mentioned a thousand dollar sale and a \$4000.00 sale.

Mr. Lucas: I show counsel two checks and ask you to examine them before I offer them to the witness.

Mr. Rose: Your Honor, I would like this record cleared up here now in connection with one matter, anyhow. At the time of his arraignment for plea, at which time he entered a plea of not guilty, he was asked, as the records will reflect, his true name, whether his true name was "Carter," and he responded that it was. Now, at the time he was called to the stand here he volunteered, after being sworn, that his true name is Willard Eugene Warren, and counsel out of a multitude of names that this witness resorted to, on his own motion prefers to identify him as Mr. Carter in this record. Now, I know your Honor isn't [808] confused, neither am I, and I am sure interrogating counsel for the government is not confused about this matter; but I don't know why he should elect, your Honor, to refer to him as Carter, when he has un-

(Testimony of Willard Eugene Warren.)

der oath said that his true name is Willard Eugene Warren; and I think he might as well call him by some of these other names. Why select "Carter?"

The Court: I wouldn't know.

Mr. Rose: I think the record should be clarified that counsel in addressing this witness address this witness as "Mr. Warren." At least we have that part under oath that that is his true name.

I take it you are about to show these two exhibits to the witness?

Mr. Lucas: If you are through examining them, that is my intention, Mr. Rose.

Mr. Rose: I will make a note as to the date; February 25, 1937, and March 27, 1937, all right.

Q. By Mr. Lucas: I show you, Mr. Carter, after having first shown to counsel, a check dated February 25, 1937, drawn on the Miners National Bank, Pottsville, Pennsylvania, Pay to the order of W. E. Edwards \$1000.00, signed Elizabeth Parsons, and ask if that is one of the checks which you referred to awhile ago.

Mr. Rose: Now, just a minute. I respectfully submit that it is wholly immaterial, because the check on [809] its face shows that it is made to one W. E. Edwards, who collected the proceeds of said check, and it is a transaction, manifestly, that occurred while Mr. Danziger was in England, and is wholly irrelevant and immaterial and not binding on the defendant.

Mr. Lucas: We offer it in corroboration of the

(Testimony of Willard Eugene Warren.)

witness' testimony that he did have these transactions with Mrs. Parsons, and the check is further proof——

Mr. Rose: Then, you have a charge against this witness, but it isn't contended that these proceeds came into the hands of any defendant now on trial. It is not a transaction referred to in the indictment, and we do not seek to be obligated or bound by the hearsay and out of the presence transactions of this witness.

Mr. Lucas: If I may proceed, your Honor. The witness testified that while Mr. Danziger was in England, that he made two or three sales, communicated that fact to Mr. Danziger in England, and we have in evidence already Mr. Danziger's letter in which he recognized the Parsons deal and was interested in it, and the witness has already testified as to these two transactions, one for a thousand dollars and one for \$4000.00, and this is corroborative proof of the witness' testimony. He testified that they were not cleared through the Wake Development Company, but that he cashed the checks and remitted the proceeds to Los Angeles. So, therefore, they are just in corroboration of [810] the oral statements of the witness, and part of the scheme that we have alleged that was concocted by these two defendants.

Mr. Rose: I have heard this resort to the use of "scheme" that he has alleged, I have heard that frequently here. If your Honor will inspect these checks that are now being inquired about, your Honor will observe that these are checks that were



(Testimony of Willard Eugene Warren.)

made out to one W. E. Edwards, and endorsed by one W. E. Edwards, when Mr. Danziger was in England. Counsel is apparently building up his own straw men. He says he is offering this as corroborative of what? Corroborative of any alleged transaction in which the defendants on trial participated? No. Is it one of the transactions involved in this indictment? No.

The Court: What do you say about that?

Mr. Lucas: Counsel——

Mr. Rose: In other words, he wants to bind us by these straw men. This witness says he wrote a letter to Parsons——

The Court: What do you say about that statement?

Mr. Lucas: The witness says he collected these checks and remitted the proceeds thereof to Wake Development Company.

Mr. Rose: That is, he sent \$4000.00 and \$1000.00 to Wake Development Company?

Mr. Lucas: No. [811]

Mr. Rose: Why do you say he collected these and remitted the proceeds? That is not true. That is not even the witness' testimony.

Mr. Lucas: The proceeds of those checks that Wake was entitled to under the scheme, that is, one-third I take it, of those checks was remitted, and it is shown in the correspondence of Mr. Danziger with the witness that the Parsons deal was known to him and that he as president will be very glad

(Testimony of Willard Eugene Warren.)

to cooperate in making a further touch on her when Danziger gets back.

Mr. Rose: I think the argument of the case can be left to the conclusion of the case. So far as I am concerned, these transactions, your Honor, in the form of this documentary material in these checks, cannot possibly be competent or binding on us.

The Court: They are admitted.

Mr. Rose: May an exception be allowed?

The Court: Exception is allowed.

The Clerk: 106.

(The documents referred to were marked as Government's Exhibit No. 106, and were received in evidence.)

Q. By Mr. Lucas: How long did Mr. Danziger remain in New York after he returned from England? I mean to the best of your recollection.

A. I can't tell you that specifically. It is a little vague in my mind. I would say a couple of weeks or thereabouts, if I was to hazard a guess.

Q. Do you recall substantially the time he returned? A. No, I don't.

Q. The date of some of the exhibits here would indicate that he returned some time in July of 1937.

A. Do you mean that he returned from England?

Q. Yes.

A. Oh, yes, he returned from England in July. I thought you meant returned to Los Angeles.

(Testimony of Willard Eugene Warren.)

Q. What time in July did he return from England?

A. Well, it was around the middle of July, to the best of my recollection.

Q. All right. I just wanted that fixed. While he was in New York and before he returned to Los Angeles did you have any conversation with him with respect to your own affairs?

A. Yes, I talked a good deal about my affairs, especially about my indictment and conviction in the conspiracy charge in Chicago, along with other defendants that were tried with me, and others that were not tried.

Q. What did you say to him and what did he say to you with respect to that?

A. He told me——

Mr. Rose: Just a moment. I object to it as wholly irrelevant and immaterial, and not pertaining or relating to any matter in issue here.

The Court: You may answer. [813]

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: He told me he thought it was a darn shame that I had to have the trouble that I had out there. I told him at the time that I thought that I hadn't obtained the best representation in the case, and that now I had the matter up on appeal, and I showed him one of my briefs that I had on appeal.

Mr. Lucas: I show you, counsel, a brief——

Mr. Rose: Now, are we going to try the merits

(Testimony of Willard Eugene Warren.)  
of the brief or whether counsel was adequately representing him? Now, your Honor, this has reached the proportions of absurdity. Now, we are going into collateral matters as to whether his conviction was properly had in Illinois, whether he had proper representation, and whether his brief was meritorious and whether the court accurately affirmed. Now, your Honor, that is purely irrelevant and immaterial to this issue. We have enough red herrings in this case in the form of many documents about which little has been offered except that they came into the possession of someone, and we have got them in here now, and now we are going to talk about a brief, an argument for plaintiffs in error, in the Supreme Court of Illinois. I submit, your Honor, it is wholly immaterial.

Mr. Lucas: Your Honor, counsel anticipates me.

Mr. Rose: You are going to show him this brief and [814] ask him if he showed it to Mr. Danziger; and I say it is immaterial.

Mr. Lucas: We are not going into the merits of the case. Testimony has been read into the record, Mr. Danziger's testimony, in which he said he saw the brief; I merely want to identify and introduce the brief. I am not going——

The Court: We don't need it.

Mr. Lucas: I think it is admissible, and I would like to have it in the record.

The Court: No. Somebody might have to pay for transcribing it, perhaps.



(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Mr. Carter, do you remember a woman by the name of Florence Lawyer?

A. Yes, I do.

Q. Did you ever call upon her?

A. Yes, I did.

Q. Do you remember her address or where it was she lived?

A. I think she lived on Odell Avenue in Yonkers.

Q. Do you remember approximately the time that you talked with her?

A. No, I don't remember the specific time. If I saw anything that pertained to the——

Q. Did you have a business transaction with her?

A. I participated in a transaction with her with [815] the Wake Development Company.

Q. Just tell us when you saw her, to the best of your recollection, and what you said to her and what business transaction you had.

A. Well, she was a stockholder in the Golden Quebec Mines Limited, and I called on her at her home and told her——

Mr. Rose: Just a minute. I am going to object to that on the ground it is hearsay.

The Court: When is the alleged date of this transaction?

Mr. Lucas: Part of the allegations of the indictment, your Honor.

The Court: Go ahead.

The Witness: I called at her——

(Testimony of Willard Eugene Warren.)

Mr. Rose: Your Honor has overruled the objection?

The Court: Correct.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: I called at her home in Yonkers and told her that I represented a Canadian concern, to the best of my recollection, and that I understood that as a stockholder of the Golden Quebec Mines Company she had exchanged the shares of the Golden Quebec into the Trinidad International Petroleum Company, who had made an offer to the Golden Quebec stockholders to exchange such shares. She told me, "Why, no, I haven't done anything like that." She said, "This [816] is the first I ever knew about it."

I said, "Well, that's surprising. I thought the Trinidad International Petroleum Company had made all the Golden Quebec stockholders aware of the fact that they would trade in the shares for Trinidad International Petroleum."

I proceeded to tell her a story about the Golden Quebec Mines Company going into receivership, and that the stockholders of the Golden Quebec Mines Company would probably or had received a certain right to exchange their shares, because a group of men that were interested in the Trinidad International Petroleum Company were interested in purchasing the properties that they owned in Canada. She said, well, she hadn't heard anything about it. I told her that the value of the stock was

(Testimony of Willard Eugene Warren.)

\$5.00, its par value, and the notes could be sold around \$4.80, which was equivalent to the par value of the pound sterling at that time; and that as a representative of the Sterling Securities Company in Toronto, I would like to buy the notes if she had them, but as long as she did not have them, well, the only thing I could suggest to her was to write to the Wake Development Company in Los Angeles and find out why they had never exchanged the notes—or the Golden Quebec Mines stock.

Mr. Rose: Just a second. What was the name of the representative of Sterling and what? [817]

The Witness: Sterling Securities Company.

Q. By Mr. Lucas: Proceed, Mr. Carter.

A. She told me that she certainly would do that by all means, and she thanked me very much for calling on her.

I am not positive, but I believe I used the name of Roberts.

Mr. Rose: I move that be stricken, your Honor.

The Witness (Continuing): My memory is a little vague. I used a good many names, and I haven't looked at any of the correspondence in the matter, and I haven't refreshed my mind at all; I am just trying to remember.

Q. By Mr. Lucas: All right. Go ahead. Did you see her again?

Mr. Rose: Just a moment. I addressed a motion to the Court.

The Court: Motion denied.

Q. By Mr. Lucas: Proceed, Mr. Carter.

(Testimony of Willard Eugene Warren.)

A. That was the only visit, to the best of my recollection, that I had with Mrs. Lawyer. However, I did telephone her three or four times afterwards at New York City.

Q. Can you recall anything you said to her or that she said to you?

A. When I came back——

Mr. Rose: Just a second. I am objecting to that on the ground that no foundation is laid, it is irrelevant and [818] immaterial, and it calls for hearsay.

The Court: He may answer.

Mr. Rose: As to foundation, I wish to point out to the court that the foundation is even lacking in the fact that he even knew who he was talking to on the other end of the 'phone.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: When I came back to New York, after my talk with Mrs. Lawyer, I wrote to the Wake Development Company in California and advised them that I had just contacted Mrs. Lawyer, and that they might receive an inquiry from her, and to send the regular offer that we had set up as a regular stipulated offer to Golden Quebec Mines stockholders, in the event they did get an inquiry from Mrs. Lawyer.

Then I waited about six or seven days or so, a length of time I thought an air mail letter would go back and forth from California, and I called



(Testimony of Willard Eugene Warren.)

Mrs. Lawyer and asked her if she had heard. She said she had—no, she told me on the first call that she hadn't received any reply from them as yet. I think this was about five or six days after I called her, and I said, "Well, that's funny, I wouldn't let it drag along too long. If you don't hear from them, I would be insistent and write again." [819]

Then I received a letter from the Wake Development Company in which they sent me a copy of a letter that Mrs. Lawyer had sent them. To the best of my recollection Mrs. Lawyer went on to state that somebody had called on her from the Sterling Securities Company in Canada and stated that they wanted to buy her notes, and so forth, and she wanted to know why they had never issued the stock, and she wanted them to do something about it.

When I read the letter, I realized——

Mr. Rose: Just a moment. I think you ought to take the witness in hand; he is about to tell us what was going on in his mind there.

The Witness (Continuing): I immediately wrote back to Mr. Danziger and stated that under no circumstances should he make an offer to exchange her stock for her under the conditions of her letter, and I suggested that Mr. Danziger write her and tell her that he had had similar inquiries from other people about people offering them higher prices for the stock, and that he had no part of it, and therefore he could not make the exchange on

(Testimony of Willard Eugene Warren.)

the basis which she offered, and did not desire to do so.

I don't remember all of the letter, but I suggested certain things in the letter, partly which later I found Mr. Danziger had sent, because he sent me a copy of the letter which he wrote her, and then I called the woman again and she told me that she received a letter from them, [820] and they frankly told her they weren't going to do it, and what was it all about. And I said, "I can't understand why they would do that." I said, "Probably"—I said, "Have you got a copy of the letter you wrote them?"

And she said, "Yes, I have a kept a copy." She said, "I copy everything down."

I said, "Would you mind reading it to me over the telephone?" And she did.

And I said, "That is the reason. You started to talk about outside brokers purchasing the stock, and so forth, and that is one of the things that they don't want. You better write back and tell them that you accept it as a speculation, not with the stipulation as to some future performance or profit that would be performed in the future, or some expectation you had for selling the stock," and so forth. And she said, "All right."

Well, I again received a letter from Los Angeles, which the woman was a little milder—the woman stated practically the same thing, again, in a little different way, and I again wrote back air mail to Mr. Danziger and said that under no cir-

(Testimony of Willard Eugene Warren.)

cumstances should he accept her exchange under the conditions she wanted to make it, because it would appear to be binding on Mr. Danziger, and I was looking out for his interest as well as my own, not having anything in evidence of that sort. To the best of my knowledge, this interchange of letters took place three or [821] four times, and each time I received a copy from Mr. Danziger, and each time I told him he shouldn't accept the sale. Finally the woman did write to Mr. Danziger, she told me over the 'phone, I proceeded to call her several times during the course of this thing, she did write a letter, finally, stating she would accept the exchange strictly on the speculative merits of the deal without any conditions to bind them, and so forth. And at the time I received that letter from Mr. Danziger, I said, "As long as you have this in evidence, you can accept the sale."

Q. By Mr. Lucas: All right. I show you, after having first shown to counsel——

Mr. Rose: Is there another one of these?

Mr. Lucas: Perhaps a copy of this may be in the Lawyer file.

Mr. Rose: That is my offhand impression.

Q. By Mr. Lucas: I show you, after having first shown to counsel, a letter under date of November 13, 1939, and ask you if you have seen that before and from whom you received it? Did you receive it, and from whom, Mr. Carter?

(Testimony of Willard Eugene Warren.)

A. I received this from Mr. Danziger, the Wake Development Company.

Q. On the letter there on the bottom is handwriting; are you familiar with the handwriting?

A. Yes, that is Mr. Danizger's, the words "original clear," pointing to the last paragraph. [822]

Mr. Lucas: I offer this in evidence and ask that it be made a part of—Exhibit 50, is it, Mr. Mainland?

The Clerk: 56.

Mr. Mainland: 56.

Mr. Rose: You haven't cleared up the matter of that obliteration.

Mr. Lucas: I am sorry, Mr. Rose, thank you.

Q. By Mr. Lucas: There is a section cut out of the letter immediately below the date, and above the writing "Yonkers, New York"; did you cut that out? A. Yes.

Q. What was cut out?

A. That was Florence Lawyer, Odell Avenue, I think.

Mr. Lucas: I offer this in evidence and ask that it be made a part of Exhibit 56.

The Court: Admitted.

(The document referred to was received in evidence and made a part of Government's Exhibit 56, in evidence.)

Q. By Mr. Lucas: Do you know of any other person who contacted Mrs. Lawyer?

A. Yes, I think that about a year after the previous sale was made, after this first sale was made,



(Testimony of Willard Eugene Warren.)

that I discussed here previously, that I sent Mr. Callahan up to see her.

Q. I see. Briefly, did any sale result from it?

A. No, no sale resulted from it. [823]

Q. Did you meet man by the name of Harry F. Pitts? A. Yes, I did.

Q. Do you remember his address?

A. Well, it is up in New York, either Kingston or Newburgh. My recollection is just a little vague about the town.

Q. Either Kingston or Newburgh?

A. Yes, either Kingston or Newburgh, one of those towns up there.

Q. Do you remember approximately when you met Mr. Pitts?

A. The date is very vague, but I remember the man very well because he was in the optical business, eye doctor.

Q. Do you remember meeting him and talking to him? A. Yes, I do.

Q. Can you tell us what was said between you?

Mr. Rose: I object to it on the ground that no proper foundation has been laid, and it calls for hearsay.

The Witness: Well, I called——

Mr. Rose: Just a moment.

Mr. Lucas: Let's have a ruling on it, first.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: I called on him in the evening,

(Testimony of Willard Eugene Warren.)

around 5:00 o'clock I called at his office, and I was told that he was out by his girl, but that he was going to be back [824] in his office that evening, and that if I returned around 7:00 o'clock that he would be there.

He came back and I told him that I represented some Canadian interests, I don't remember who I said I represented. I asked him pretty much the same thing as I asked——

Mr. Rose: I move that be stricken as a conclusion of the witness.

Mr. Lucas: I will stipulate it may be stricken.

The Court: Stricken.

The Witness (Continuing): I asked him if he had received any offer from the Trinidad International Petroleum Company to exchange his Golden Quebec stock for stock and notes in the Trinidad Petroleum Company. I told him I represented some Canadian interests that were interested in buying the notes of that company, and we were bidding \$4.80 for the notes, and that the stock had a market of around \$5.00, and that the rate of exchange that had been offered to them by the Wake Development Company and the Trinidad International Petroleum Company in California would, naturally, represent him a profit at those figures, and therefore I thought that he might be willing to sell if he had made the exchange. And he told me, "No, I haven't made any exchange. I didn't know anything about it until now."

And I said, "Well, it looks like you have been

(Testimony of Willard Eugene Warren.)

asleep at the switch, you better get busy and write to them [825] and find out just what kind of an agreement they will go into with you, and if it is still on the basis that it was made originally, we might be able to do some business together."

And he said, "Well, that is awfully nice of you to tell me that." He said, "I will certainly write them right away and find out all about it." And he was a very sociable type of fellow, I remember him especially well because he took me in the back and bought me a drink, of his office, and then he and I left together and he drove me down the street; and I remember him especially because he told me there was a full moon out that night, and that was an omen of good luck, and he must have thought I was the good luck omen that came to tell him about this deal. That is why I remember Pitts very well. That is all there was to Pitts' deal.

Later on I went to New York and received a letter that he had written in about stock, and I wrote to Wake Development Company and told them to send the regular form letter that we had agreed upon, to make him the regular offer. Later I heard he had sent in a check for the amount of shares he had; the amount of the shares I can't remember, but they were sent, and I was later sent my commission on the sale.

Mr. Lucas: I show you, counsel, the letter that I am about to show the witness. [826]

Mr. Rose: All right.

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: I show you, Mr. Carter, after having first shown it to counsel, a letter on the letterhead of Wake Development Company, dated January 9, 1939, and ask you if you recognize the signature assigned to the letter.

The Court: You ought to have him look these things over before he comes in. It is taking too much time.

Mr. Lucas: I asked him a simple question, your Honor.

Q. By Mr. Lucas: Just answer the question, Mr. Carter, do you recognize the signature?

A. Yes, I recognize the signature as Alda Faulkner.

Q. There are certain penciled memoranda on the bottom of that letter, I think perhaps words, I know figures——

A. Yes.

Q. ——do you recall or know anything about those figures?

A. That is evidently my own handwriting; but I was trying to figure out how it go on there.

Q. All right. Do you recognize it as your own handwriting?

A. Yes, I do.

Q. And do you not now have any recollection of how it got on there?

A. No, I don't.

Mr. Lucas: I offer this as government's exhibit in evidence, and ask that it be made a part of Government's [827] Exhibit No. 58.

Mr. Rose: We object to it on the ground that it affirmatively appears that certain notations in the handwriting of this witness were put on there



(Testimony of Willard Eugene Warren.)  
in undisclosed circumstances, and it, manifestly, is incompetent on that ground, in addition to the other grounds that I interjected to the copy of that letter.

The Court: Admitted.

(The document referred to was received in evidence and made a part of Government's Exhibit No. 58, in evidence.)

By Mr. Lucas: I show three more letter to counsel before showing it to the witness. I will say copies of the letters just received in evidence and carbon copies of the ones I have just shown to counsel are already in that exhibit, but I am offering the originals.

Mr. Rose: You are trying to offer it through this witness, is that it?

Mr. Lucas: That is the general idea, Mr. Rose. I was going to interrogate the witness as to the signature.

Mr. Rose: I see. You have got him as a handwriting expert now. Go ahead, and I will make my objection at the proper time.

Q. By Mr. Lucas: I show you a letter, Mr. Carter, on the letterhead of Wake Development Company, and ask you if you recognize the signature assigned to the letter? [828]

Mr. Rose: I call your attention to the fact, counsel that his Honor suggested that you might resort to this business of qualifying him as a handwriting expert when court is not in session.

(Testimony of Willard Eugene Warren.)

The Witness: Well, it appears to be Alda Faulkner's, to the best of my knowledge.

Q. By Mr. Lucas: On the bottom of this letter there is some pen and ink writing; do you recognize the handwriting there? If you don't, just please say so, Mr. Carter.

A. No, I don't recognize it offhand.

Q. Very well.

Mr. Lucas: I offer this letter——

The Court: Are they letters that he received?

Mr. Lucas: No, they are not letters that he received, your Honor; they do not come from him at all. I could probably cover it by stipulation, but while I had him on the stand——

The Court: Who are they addressed to?

Mr. Lucas: To the man Pitts about whom he has been testifying.

The Court: Where did you get the letters?

Mr. Lucas: From Mr. Pitts in the course of the investigation.

The Court: They are on Wake Development Company——

Mr. Lucas: They are all on Wake Development Company, and each of them, we contend, contains the signature of [829] Alda Faulkner, and on this one there was just some writing, and I thought he would know something about it and evidently he does not.

I offer all four of the letters, and ask that they be made a part of Government's Exhibit 58.

The Court: Copies are in?

(Testimony of Willard Eugene Warren.)

Mr. Lucas: I am quite sure carbon copies of each are in; but these are the originals, and I want them in for that purpose.

Mr. Rose: In the interest of speeding things up a bit, your Honor, here is the situation: There has been frequent resort to this particular mode of introduction of communications from the Wake Development Company. First, the manifest carbon copies of these originals that came into the possession of Mr. Mainland or some of his associates, from the addressees, that is, the carbon copies, have been introduced and received by your Honor without exception, as I can recall, over certain stated objections. Now counsel supplements that by offering a duplicate communication, in part, in the form of the originals. May it be deemed, your Honor, that the objections interposed to the carbon copies may likewise be assumed as having been made to the duplicate of said document?

The Court: So understood. They are admitted.

The Clerk: As part of Exhibit 58?

Mr. Lucas: Let the record show that envelopes [830] accompany each of the letters.

Q. By Mr. Lucas: Now, Mr. Carter, do you remember a man by the name of F. A. Russell?

A. Yes, I do.

Q. Do you remember meeting him?

A. Yes, I do. The town is Leominster, I think, Massachusetts.

Q. Do you recall approximately the time you met him?

(Testimony of Willard Eugene Warren.)

A. No, I can't remember that.

Q. Do you recall the circumstances of meeting him and any conversation with him?

A. I think it was in 1939, although I am not sure, '38 or '39; the latter part of '38 or '39. I remember having his name and calling at his house. I told him that I understood——

Q. Who was present, now?

A. I beg your pardon?

Q. You better tell us who was present, first.

A. Mr. Russell and his wife.

Q. All right.

Mr. Rose: Now, you are asking for the conversation?

Mr. Lucas: Exactly.

Mr. Rose: To which we object on the ground that no proper foundation has been laid. It is hearsay and incompetent.

The Court: He may answer. [831]

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: While I was in Canada I had obtained some names of South McKenzie Island Mines, I think that is the correct name.

Q. By Mr. Lucas: Stockholders, you mean?

A. Stockholders, that's right, that were supposed to own that stock. Mr. Russell was on the list. I went into Mr. Russell's house and interviewed he and his wife in their living room. I told him that I understood that he owned some Trinidad International Petroleum notes, preferen-



(Testimony of Willard Eugene Warren.)

tial profit-sharing notes, and that I represented those Canadian interests, we were interested in acquiring those notes and were willing to pay around \$4.80, which was then the exchange rate for the pound sterling.

I asked him if he had any substantial amount of the notes, that I was interested in picking them up right away for the connection that I had. And he said, "Why, no, you must have it wrong."

And I said, "You are stockholder in the South McKenzie Island Mines Company, aren't you?"

And he said, "Yes, I have a lot of that."

Well, I said, "How many shares do you have?" I think he mentioned he had quite a number of shares, 10,000 or 15,000 shares. And I said, "Well, evidently you have been left out in the rain, because you could have exchanged [832] those shares of stock for the Trinidad International Petroleum stock and notes, and besides having a certain number of shares of the Trinidad International Petroleum Company, which would be extremely valuable, you would also have the notes which you could sell to me now."

He said, "Well, that is certainly news to me." He said, "How will I find out about this proposition?"

I proceeded to give him the name of the Wake Development Company who was the fiscal agent, as I understood it, the fiscal agent for the exchange, and I said if he proceeded to write to them he might be able to get some results.

He said, "Have you any suggested form that I should write to them?"

(Testimony of Willard Eugene Warren.)

And I said, "No, I think you ought to be very specific." I said, "I think you ought to go right to bat on the thing." I said, "Instead of you writing out there direct and asking for an inquiry, I think you ought to make a proffer of a check along with your stock and insist that they exchange it. Tell that you know it can be exchanged."

Well, the amount of money that the transaction was supposed to involve was around \$3500.00, to the best of my recollection."

Q. What do you mean by that expression, "the amount of money——

A. Well, the arrangement for the exchange of stock [833] as I had worked it out at that time would call for the shares of stock which he owned in the South McKenzie Mines plus \$3500.00 in cash.

I can't remember exactly what the arrangement was, but he said, "Well, I wouldn't want to send them \$3500.00 before I know that they would accept it." He said, "Don't you think it is better that I write them first and find out whether they will accept it?"

I said, "Well, I think that is a little weak." I said, "I tell you what you do. You make out a check for, say, 10 percent, make a bona fide offer," I said, "so you will have something concrete, then they will either have to turn it down or return it to you." I said, "That will get you quick action."

So he said, "Well, that's a good idea, I think that is just what I will do, I will write out a check for

(Testimony of Willard Eugene Warren.)

\$350.00 and I will send it right out there. Who will I make it payable to?"

And I said, "I imagine you should make it payable to the Wake Development Company, because they are the fiscal agents in the transfer office for the stock."

So he said he would do it. I remember it was a rainy night, and I had my umbrella, and I had taken my rubbers off, and I said, "I think I will be leaving."

Q. In this first conversation, did you say anything to Mr. Russell about Trinidad International Petroleum? [834]

Mr. Rose: I object to that as leading and suggestive, your Honor. The witness has been, over objection, permitted to relate a conversation.

The Court: He may answer.

The Witness: Yes, I told him about the Trinidad International Petroleum Company, as I usually did everyone. I told him that this was——

Mr. Rose: Just a moment. I move that——

Mr. Lucas: I will stipulate that expression "as I usually do everyone" may be stricken.

The Court: Stricken.

The Witness (Continuing): I told him the Trinidad International Petroleum Limited was headed by a group of men who had been formerly associated with Mr. E. L. Doheny in the enterprises of the Pan American Petroleum and Transport Company and Mexican Petroleum Company; that they had made large sums of money while associated with those

(Testimony of Willard Eugene Warren.)

enterprises; that during the time they had been with them they had acquired a group of properties in the British West Indies, namely, Trinidad, Port-au-Spain; that these properties had been put into the company, put into the Trinidad International Petroleum Company, after the properties that E. L. Doheny formerly controlled, namely, the Pan American Petroleum and Transport Company and Mexican Petroleum Company had been merged into the Standard Oil of Indiana—I think it was the Standard Oil of Indiana or New Jersey, if my memory doesn't fail me, I think it is Standard Oil [835] of Indiana—and that now these men were expecting to do the same thing with the Trinidad International Petroleum that they had done with the Mexican Petroleum; that the Mexican Petroleum stock had sold as high as \$400.00 a share on the stock exchange, and that the stock and notes of this company was traded both here in the Canadian markets and in London at around their par value, which was around \$5.00 for the stock and \$5.00 for the notes. That is about the extent of the story as I told it.

I usually had a paper with me that showed——

Mr. Rose: Just a moment.

The Witness: I had a paper with me——

Mr. Rose: Just a moment. The witness started to say “usually”; now he said he did have a paper. If he did, we want to see the paper if we are going to have any testimony about it.

Q. By Mr. Lucas: Did you have a paper with you?  
A. Yes, I usually had one of the——



(Testimony of Willard Eugene Warren.)

Q. Not what you usually had. Bearing in mind—— A. I understand.

Q. ——the deal itself and the talk, did you then have a paper with you?

A. Yes, I had a paper with me at the time, and it was an English paper that I had for quite some time, and I showed him the various stocks and told him that this group was traded among that group, but I didn't designate which one, [836] because I usually did that very quickly and just showed it as a flash, and then put it away.

Mr. Rose: Just a minute. Let me have that answer. Part of it I would like to stay in and the rest of it not.

(The answer was read.)

Mr. Rose: Starting with "because" I move that it go out.

Mr. Lucas: And what follows that "because"?

Mr. Rose: Yes; that is just the reason he gives.

Mr. Lucas: I will stipulate that those words after "because" may be stricken.

The Court: Stricken.

Q. By Mr. Lucas: Thereafter did you communicate with the Wake Development Company in Los Angeles?

A. Yes, I did; I wrote them right away after leaving, within the course of a day or so, and told them to expect a letter with a check in it from Mr. Russell for \$350.00. I stated in my notation to the Wake Development Company or Mr. Danziger, if he was there at the time, I stated in my letter that

(Testimony of Willard Eugene Warren.)

this was 10 percent of the amount that they could expect to get after they signified their intention of making the exchange; that the \$350.00 was only a 10 percent deposit on a \$3500.00 transaction.

In that letter that I sent to them I outlined the number of shares, how much credit they would receive for the shares and how many stocks and notes that I had worked [837] out that the man would get.

Q. By Mr. Lucas: All right. Now, you have been using the name South McKenzie Island Mines in this transaction with Mr. Russell; had you prior to this time mentioned that company to Mr. Danziger?

A. No, I can't say that I did, I can't recollect that I did, although I may have.

Mr. Rose: I move thatt he latter part be stricken.

The Court: Motion denied.

Mr. Rose: May an exception be noted?

The Court: It may be stricken.

Mr. Lucas: All right.

Q. By Mr. Lucas: Thereafter did you talk with Mr. Russell again, after this first visit?

A. No. Yes, I did. I put in a long distance telephone call from New York and talked to him. That was sometime after I had received notification from the Wake Development Company that they had received a check for \$350.00. As a matter of fact, I received a telegram about the transaction. I believe the telegram was sent to me at the Willard Hotel in New York on 76th Street.

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Go ahead. Don't let me interrupt you, Mr. Carter.

A. I received a notification that the check had been received and been placed in for collection. Later I received a telegram that they had received another telegram [838] from Mr. Russell telling them to cancel the deal.

Q. Now, I show you Government's Exhibit 57, in evidence, and refer you thereto to what is marked "copy of Western Union telegram," it is dated December 2nd, 1938, addressed to George Carleton, Hotel Willard, 76th Street and West End Avenue, New York; is that the telegram you have been referring to as having received?

A. That is one of them.

Q. And were you in this Russell transaction using the name Carlton?

A. That I can't answer. I used the name Carlton at the Willard Hotel, but I don't believe I used the name Carlton in carrying on my business with Mr. Russell.

Q. All right. Go right ahead.

A. I later received—after I had received this telegram advising me—at the Willard Hotel—as stated here, a copy of which is laid before me here, "Decided not interested in transfer of stock. Kindly return check as per letter. Unquote. Advise," I called Mr. Russell on the telephone and I endeavored to find out from him what had made him change his mind. But Mr. Russell acted very suspicious—

(Testimony of Willard Eugene Warren.)

Mr. Rose: I move that be stricken as a conclusion and opinion of the witness.

The Court: It may stand.

The Witness (Continuing): Mr. Russell answered very [839] curtly. He didn't talk to me in the tone of voice, or in the same manner that he had upon the occasion of my first visit. In fact, he had so little to say to me over the 'phone that I had to do nearly—make all the conversation myself, and as a result of my conversation with him——

Mr. Rose: Just a moment. I submit that calls for a conclusion of the witness.

The Court: You may continue.

The Witness (Continuing): After my conversation I wrote a letter to Mr. Danziger stating that I didn't know why he had changed his mind, but evidently something had happened to make him change his mind and, therefore, I would advise him to be guided accordingly, and it probably would be a good idea to issue him stock for the amount of money he paid in on the basis of which the deal had been outlined.

Q. By Mr. Lucas: Did you thereafter have any contact or communication with Mr. Russell?

A. I don't remember. If there were any others I can't remember them. I remember those things that I testified to distinctly.

Q. All right.

The Court: After Mr. Rose checks that file you put it in, we will adjourn for the day.



(Testimony of Willard Eugene Warren.)

Mr. Lucas: That file I just handed Mr. Rose is already in evidence.

The Court: Have you finished with the Russell instance? [840]

Mr. Lucas: Yes, I just checked and I am finished with it.

The Court: We will adjourn for the day.

(Whereupon, at 4:30 o'clock, January 24, 1945, an adjournment was taken until 10:00 o'clock Thursday, January 25, 1945.) [841]

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Los Angeles, California,

Thursday, January 25, 1945. 10 A. M.

The Clerk: United States vs. Danziger.

Mr. Lucas: Ready for the government.

WILLARD EUGENE WARREN

(WARREN C. CARTER),

called as a witness by and on behalf of the government, having been first duly sworn, was examined and further testified as follows:

Direct Examination—(Resumed)

By Mr. Lucas:

Q. Now, Mr. Carter, you remember meeting a woman by the name of Adeline B. Skinner?

A. Yes, I do.

(Testimony of Willard Eugene Warren.)

Q. Tell me, to the best of your recollection, when and where you met her.

A. I met her at her residence in New Jersey. I am a little vague about the town at the moment, because I haven't refreshed my memory. I was under the impression it was Farmingdale, but I do remember the woman had two addresses, and I don't remember just exactly whether it was Farmingdale or another town right near it. But my impression was it was Farmingdale.

Q. Do you recall the year you met her?

A. Offhand, I don't.

Q. Do you recall meeting her and having a conversation with her? [843]

A. Yes, I met her for just a short time and spoke to her.

Q. Tell us who was present and what you said to her and what she said to you.

A. Well, I remember calling on her and asking her, telling her that——

Mr. Rose: Just a second. Objected to upon the following grounds, severally, your Honor: First, there is no proper foundation that has been laid; secondly, it is hearsay, that any conversation that this witness had with the person in question would be incompetent and not binding on the defendants now on trial.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed. Continue.

The Witness: I remember calling on her, it was

(Testimony of Willard Eugene Warren.)

in the summer, I told her I represented some Canadian interests, and as near as my recollection serves me I believe I told her I represented the Sterling Securities Company of Montreal, and I was interested in the purchase of some notes that I understood she owned in the Trinidad International Petroleum Company, and I wanted to know if she desired to sell them. And she said, "I don't have any notes in that company." And I said, "Well, that is very strange. According to the list of names I have, your name appears on it. Were you a stockholder in the Great Eastern Natural Gas Company that [844] was the stock that was traded in for the Trinidad stock?"

And she said, "Oh, yes, I have some Great Eastern Natural Gas stock."

And I asked her how many shares she had. And to the best of my memory, I think it was a hundred shares of stock. And she said, "Well, what would you suggest that I do?"

And I told her, I asked her if she had ever received any mail from the Trinidad company about offering an exchange, and she said, "Well, now, I don't know. I might have received something some time back, but I don't remember of ever doing anything about it." She said, "Well, is this stock any good?"

And I said, "Yes, the Trinidad International Petroleum stock is good, but the Great Eastern Natural Gas stock doesn't have any market; and I think it would be a very good idea if you got in

(Testimony of Willard Eugene Warren.)

touch with these people. You say you have a letter?"

Then she said, "Well, I will look it up."

And I said, "Well, I know where they are located in Los Angeles, California, and they have a fiscal agent by the name of the Wake Development Company. They make all the transfers. Now, if you want the address I will be glad to give it to you. You communicate with them, and then at a later date I will come back and see you."

Then she asked me, "Well, does this stock have any value? Would there be any object in me making the exchange?" [845]

And I said, "There certainly would, because the notes are worth about \$4.80. I would be willing to pay that. The stock is worth around \$5.00 a share. There you would have \$10.00 worth of par value stock, and it would only cost you \$3.00 to make the exchange, plus your old stock, and that would certainly bail you out regardless of what you paid for the Great Eastern stock."

And she said, "Well, that sounds very interesting to me, and I am very pleased to get the information and I shall write to them immediately."

That was about all the conversation that took place. I think at the time I had an English paper with me and I showed her quotations of various Trinidad stocks, oil stocks that were listed, and told her that this stock was traded among those stocks on the English markets. That was about the sum and substance of my conversation, at my first



(Testimony of Willard Eugene Warren.)

and to my recollection my only meeting, although to my recollection there was something that transpired, to my knowledge.

Q. Did you afterwards telephone her?

Mr. Rose: May I have the last answer preceding the last question? We will save time. I was under the impression the witness made some remark that is all he remembered about the thing.

The Witness: After I left Mrs. Skinner's residence I wrote the letter to the Wake Development Company advising them that I had made—— [846]

Mr. Rose: Just a minute. I object to that as not the best evidence.

The Court: You may answer.

The Witness: I wrote a letter to the Wake Development Company and told them that I had made the call on Mrs. Skinner and they might expect an inquiry from her, and to answer her in the regular way as we had agreed previously to do on all inquiries of that type, and to advise me——

Mr. Rose: I move the latter statement be stricken as merely a voluntary statement on the part of the witness and a conclusion.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Exception. What do you mean, you agreed previously?

The Witness: On the calls, your Honor, there had been a prescribed routine laid down between the Wake Development office, Mr. Danziger, Mrs. Faulkner, and myself, which we adhered to a cer-

(Testimony of Willard Eugene Warren.)

tain procedure in regard to all of these calls, and after we had made a certain number of the calls and had worked out the plan we always wrote instructions in a very terse manner, stating, "Give them the regular answer, short form," or "long form," as we used to say. There were, in the beginning, two versions of the type of answers that were to be made. Some of them were short and some were a little longer, and I usually stated which answer they were [847] to give, according to the circumstances of the call, and then it was established—then it was agreed that whenever an inquiry came in they sent me a copy, either the original letter—in the beginning I received a great many original letters, and then as time went on I received copies of the original letters on yellow sheets or second sheets, showing what they had received from the customer and what they had answered the customer, and then I would give any further instructions that I had at that time. That was all done by mail back and forth between New York and Los Angeles, or wherever I happened to be during my travels in making these calls.

Mr. Rose: I move that that statement be stricken on the ground that it is a conclusion.

The Court: The motion is denied.

Mr. Rose: That it is an opinion, that it is hearsay and no proper foundation laid, and not the best evidence.

The Court: Motion denied.

Mr. Rose: May an exception be noted?

(Testimony of Willard Eugene Warren.)

The Court: Exception.

Q. By Mr. Lucas: All right. Now, getting back to the Skinner transaction, did you thereafter communicate with Mrs. Skinner by letter or telephone?

A. Well, no, I didn't, but I sent another salesman over there.

Q. Do you recall the name of the person whom you sent [848] over?

A. Yes, I sent a man named Mike O'Brien. That was after I had received a notification from Los Angeles that there had been no further reply from Mrs. Skinner after they had sent her the letter stating what the proposition was.

Mr. Rose: I move that be stricken as a conclusion of the witness, no proper foundation laid, and not the best evidence.

The Court: Read the answer, please, Mr. Goldstein.

(The answer was read.)

The Court: The motion is denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: I remember Mr. O'Brien and I driving up near her residence and his leaving to make the call. It was agreed between Mr. O'Brien and I that he would then represent himself as a representative of the Wake Development Company to see why she had made the inquiry and why she hadn't exercised her right.

The Court: Did she talk about another man?

(Testimony of Willard Eugene Warren.)

Mr. Lucas: Yes.

Mr. Rose: Yes. I move that be stricken.

The Court: Did she talk about another man?

Mr. Lucas: Exactly.

The Court: Your motion?

Mr. Rose: I move to strike the statement on the ground [849] it is hearsay and incompetent.

The Court: Motion denied.

Mr. Rose: Exception noted.

The Court: Exception allowed.

The Witness: Of course, I don't know what Mr. O'Brien said, but I know what he told me after he came out.

Q. By Mr. Lucas: What did Mr. O'Brien relate to you as having occurred?

Mr. Rose: I object to that as hearsay.

The Court: Sustained.

Mr. Lucas: Very well.

Q. By Mr. Lucas: Do you know if Mrs. Skinner purchased any stock or effected any deal with the Wake Development Company?

A. Yes. A week or so after Mr. O'Brien's call I received a notification that they had received a check from Mrs. Skinner, and I also received a copy of a letter which stated—which had been addressed to Mrs. Skinner, stating they had received her check and noted a lacking of endorsement on it and had placed an endorsement on it for her and sent it through in the regular manner for collection.

Q. I show you Government's Exhibits 39, 40



(Testimony of Willard Eugene Warren.)

and 41, and ask you if you have seen any of those before. I mean before you came here in the court room.

The Court: What are Exhibits 39 and 40?

Mr. Lucas: They are letters that were introduced by [850] Mrs. Skinner herself. I don't know that this witness has ever seen them.

Q. By Mr. Lucas: Do you have any recollection of ever having seen these before?

A. I wouldn't have seen these identical letters. I have seen facsimiles of this letter numerous times.

Mr. Rose: I move that be stricken as a conclusion of the witness. Let the record reflect that his answer is that he doesn't recollect seeing the exhibits numbered 39 and 40; that his answer about facsimiles relates to Exhibit 41, which is the Great Eastern Natural Gas Company letter.

The Court: Ask the question again. Strike it, Mr. Reporter.

Q. By Mr. Lucas: Mr. Carter, I show you Government's Exhibits 39, 40 and 41, and ask you if you have ever seen those exhibits before?

A. Not those specific exhibits, no. I have seen carbon copies of two letters there.

The Court: Do you want to move, Mr. Rose?

Mr. Rose: Well, we had an answer to this at first, and now he has changed his answer.

The Court: The question is do you want to move?

Mr. Rose: I move to strike that as a conclusion of the witness.

(Testimony of Willard Eugene Warren.)

The Court: The letters you have just said you have seen copies of are these to Miss Skinner? [851]

The Witness: Yes, I saw carbon copies of the letters to Mrs. Skinner.

The Court: Where did you get those?

The Witness: I received those from Los Angeles.

The Court: The motion is denied.

Mr. Rose: May an exception be noted?

The Court: From Wake Development Company?

The Witness: From the Wake Development Company.

The Court: Exception is allowed.

Q. By Mr. Lucas: Now, Mr. Carter, I show you Government's Exhibit 43 and direct your attention to a letter on the yellow second sheet dated August 18, 1939, and ask you if you have seen a copy of that, or that particular exhibit before? Just that yellow second sheet.

A. Just the yellow sheet?

Q. That is what I am directing your attention to, first.

Mr. Rose: I object to it as leading and suggestive, your Honor; calling for a conclusion of the witness, no proper foundation laid.

The Court: Overruled.

Mr. Rose: May an exception be noted?

The Court: Yes, exception allowed.

The Witness: Yes, I saw a copy of this letter. That is the regular form letter that we always

(Testimony of Willard Eugene Warren.)

sent, and I saw a copy of this because I remember receiving it.

The Court: Who did you receive it from? [852]

The Witness: From the Wake Development Company, Los Angeles.

Q. By Mr. Lucas: I show you a letter, a yellow second sheet, August 23, 1939, addressed to Mrs. Skinner, and ask you whether or not you have seen that or a copy thereof?

A. I don't remember seeing this.

Q. I direct your attention to a carbon copy of a letter on a yellow second sheet dated September 12, 1939, and ask you if you have ever seen that or a copy thereof?

A. Yes, I have seen this. I had a copy of this.

The Court: Where did you get it?

The Witness: I received this from the Wake Development Company in the natural course of business.

Mr. Rose: I move that the latter statement be stricken as a voluntary statement, conclusion and opinion of the witness.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. My Mr. Lucas: I show you the yellow second sheet with the date line at the bottom dated September blank 1939, the top of which says, "Miss Adeline B. Skinner deposes and says," and ask you if you have ever seen that document or a copy thereof?

(Testimony of Willard Eugene Warren.)

A. Well, I can't be positive of this. I think I did, but I can't be positive. [853]

Q. I show you——

A. I think I received a copy of this at the time I received the other one.

Mr. Rose: I move that statement be stricken as a voluntary conclusion of the witness and merely an opinion.

The Court: Stricken.

Q. By Mr. Lucas: I show you what is apparently the original of the copy which I just showed you, bearing the signature——

A. I never saw that.

Q. All right. I show you now a yellow second sheet under date of September 13, 1939 and ask you if you have ever seen that or a copy thereof?

A. Yes, I did see a copy of this letter.

Q. From whom did you receive it?

A. Wake Development Company.

The Court: Who is it addressed to?

The Witness: Adeline B. Skinner, 6 West Main Street, Farmingdale, New Jersey.

Q. By Mr. Lucas: I direct your attention to the handwriting legend in the lower right hand corner in red pencil, and ask you if you can make out the writing and if you know the handwriting?

A. No, I couldn't identify that handwriting, because——

Mr. Rose: Never mind why.

Q. By Mr. Lucas: You said a while ago there was a [854] business transactions consummated with



(Testimony of Willard Eugene Warren.)

Mrs. Skinner. Did you ever receive any money as a result of that transaction?

A. Yes, I received \$200.00, less wiring charges on it.

Q. Do you recall in what manner the payment was made to you?

A. To the best of my recollection I received a money order by telegraph.

Q. Do you remember a man by the name of E. Barrie Smith?

A. Yes, I remember the name.

Q. Do you recall the circumstances of meeting him?

A. Yes, I remember the circumstances.

Q. And where did he live?

A. To the best of my recollection it was Hartford, Connecticut.

Q. Do you recall approximately the time that you talked with him?

A. I can't give you that, no.

Q. All right. Have you any recollection of what was said between you and Mr. Smith?

A. Yes, I remember the occasion of calling on Mr. Smith at his business office, and——

Mr. Rose: Just a second. I expected a yes or no answer. Objection is had to this proposed or solicited [855] conversation upon the following grounds: One, that no proper foundation has been laid; secondly, it calls for hearsay; thirdly, that it is incompetent; finally, that it is not binding on the defendants.

(Testimony of Willard Eugene Warren.)

The Court: Who is E. Barrie Smith?

Mr. Lucas: He is one of the counts in the indictment, your Honor.

The Court: Objection is overruled.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: I asked E. Barrie Smith if he had any Trinidad preferential profit-sharing notes. He said to me, "Why, no. Why do you ask me that?"

I said, "Well, I had your name on a list here as being a possible owner of the notes of that company, and I represent some Canadian interests who are interested in buying the notes."

And he said, "No, I never heard of it."

I said, "Well, do you own any other Canadian securities, principally Golden Quebec Mines Limited?"

He said, "Yes, come to think about it, I do own some shares in that."

At the time when I made the call, I knew how many shares——

Mr. Rose: I move that be stricken as voluntary and not responsive. [856]

The Court: Denied.

The Witness (Continuing): I knew ahead of time how many shares he had, and my memory doesn't serve me now as to how many it was, but I asked him to tell me how many shares he had, and he answered a certain number of shares, I can't remember how many it was, I don't believe it was

(Testimony of Willard Eugene Warren.)

a very large amount, and he said, "What has that to do with it?" And I said, "You can exchange those shares for Trinidad International Petroleum stock and notes if you will write to the company in Los Angeles and tell them that you own the securities and that you have never been made aware of the rights to exchange it, or any offer ever having been made to you previously."

He said, "Well, why would I get stock in an oil company for gold mining stock?"

And I stated to him that the properties of the Golden Quebec Mines Limited were being sold in a receivership proceedings, and that my understanding was some men interested in oil properties were going into the gold business in Canada and were buying up the properties out of receivership, and because there were certain difficulties between the stockholders and the committees for the receivers, that they had made an arrangement whereby the owners of the Trinidad oil stocks were going to allow them to buy some shares in this company for any equity that they might have had in the old Golden Quebec properties. [857] And he said it was the first he had ever known about it, but he would write out there and see if he couldn't exchange his shares. And that was about all the conversation I had with him, and he said, "Well, will I hear from you again?" And I said, "Yes, I will get in touch with you probably in a couple of weeks and see if you have the notes, and at that time we can do some business."

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Did you ever thereafter personally call on Mr. Smith again?

A. Not to my recollection.

Q. Did you communicate in any way with the Wake Development Company?

Mr. Rose: Object to that as calling for a conclusion of the witness and not the best evidence.

The Court: Overruled.

The Witness: I did communicate with the Wake Development Company on that call and told them the circumstances of my call, briefly, stating that I had made a call and they would receive an inquiry, and to answer them in the regular form letter that we had arranged previously to answer on all inquiries from stockholders of the Golden Quebec Mines Limited.

Mr. Rose: I move that the answer be stricken on the ground that it incorporates a conclusion and declaration on the part of this witness in the absence of a document and its contents. [858]

The Court: Denied.

Mr. Rose (Continuing): Its inability of production.

The Court: Motion denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. By Mr. Lucas: Now, I show you, Mr. Carter, Government's Exhibit 59, in evidence, calling your attention, in particular to the yellow second sheet dated February 7, 1939, bearing at the bottom thereof letters in red pencil "QKGR", and



(Testimony of Willard Eugene Warren.)

ask you if you have ever seen that carbon copy or a copy thereof?

A. Yes, I remember seeing a copy of this letter before.

Mr. Rose: Just a moment. I want to clear the record up so I will have in mind the form of objection to interject. You have referred to some red writing and made it a part of your question. Did you refer to that red writing as part of the document he assertedly saw? Or did you just mention that to identify the document?

Mr. Lucas: As part of the identity. I don't conclude, myself, from the answer of the witness, that he saw the red writing on this copy, but I will be happy to ask him.

Mr. Rose: Let's clear that up first.

The Witness: I never saw this carbon copy itself before.

Q. By Mr. Lucas: And whatever you have seen——

A. I have had an exact duplicate of that copy in my possession. [859]

Q. Did your copy which you had in your possession contain writing, this writing here, "OKGR"?

A. No, it did not, to the best of my memory.

Mr. Lucas: All right. Does that satisfy——

Mr. Rose: I wanted to clear it up. I had in mind, undoubtedly, you referred to it merely for the purpose of identification, but in view of the witness' former answer to that former red writing,

(Testimony of Willard Eugene Warren.)

I assumed that he did not know, but that is cleared up now.

I move that his answer be stricken on the ground that it is a conclusion of the witness and no foundation has been laid.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. By Mr. Lucas: I refer you to another carbon copy on a yellow second sheet addressed to E. Barrie Smith dated February 6, 1939, and ask you if you have seen that or a copy thereof.

A. I don't remember seeing this one. I didn't usually receive those.

Mr. Rose: I move the latter statement be stricken as voluntary.

The Court: What was the last part, Mr. Reporter?

(The answer was read.)

The Court: Denied. [860]

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. By Mr. Lucas: I show you a carbon copy of a letter dated January 23rd, 1939, and ask you if you recall ever seeing that or a copy thereof?

A. Yes, I have seen a copy of this. I had a copy of it.

Mr. Rose: I move that be stricken as a conclusion of the witness and not the best evidence.

The Court: Denied.

Mr. Lucas: Now, I offer in evidence, if the

(Testimony of Willard Eugene Warren.)  
court please, as a part of Government's Exhibit 59 in evidence, an original check dated January 24, 1939, drawn on the Hartford National Bank and Trust Company, Farmington Avenue Branch, signed "E. Barrie Smith." Also an original letter dated January 10, 1939, addressed to Mr. E. Barrie Smith, and containing the signature "A. Faulkner"; original letter dated January 19, 1939, addressed to E. Barrie Smith, signed "A. Faulkner," carbon copy of which letter is already in evidence and is a part of Government's Exhibit 59; original letter dated January 26, 1939, addressed to E. Barrie Smith, signed "A. Faulkner," carbon copy of which is already in evidence in Exhibit 59; original letter dated February 6, 1939 addressed to E. Barrie Smith, on the letterhead of Wake Development Company, signed "E. Wake", below that signature "Asst. Secretary," a carbon [861] copy of which is already in Government's Exhibit 59; and ask that these documents which I have previously shown to counsel be made a part of Exhibit 59, which contains the correspondence heretofore introduced in evidence, and as a part of the offer I state that these come to me from the Securities and Exchange Commission.

Mr. Rose: That last declaration of counsel, I take it, is immaterial and really doesn't form a part of the offer.

Mr. Lucas: No; by way of explanation only, Mr. Rose.

Mr. Rose: I don't think it has any place in

(Testimony of Willard Eugene Warren.)

the record. I haven't any objection, your Honor, to the check, for the reason that the check appears on its face and on the opposite side, by usual bank stamps and clearing house significations, to show that it was deposited to the credit of the Wake Development Company. But as to the others, that is, the letters identified, I object to them on the ground that no proper foundation has been laid, and they are immaterial.

Mr. Lucas: I am perfectly willing to put Mr. Mainland on the stand and have him testify to his acquisition of them, the manner in which he required them.

The Court: You will have to do it.

Mr. Lucas: Will you step down, Mr. Carter? Take the stand, Mr. Mainland.

(Witness temporarily withdrawn.) [862]

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ALLAN G. MAINLAND,

recalled as a witness by and on behalf of the government, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lucas:

Q. I show you the following file about which we have been talking, Mr. Mainland, and I will ask you to explain to the court the manner in which



(Testimony of Allan G. Mainland.)

those documents now in your possession came into your possession.

A. I obtained these direct from E. Barrie Smith by mail, after correspondence with him.

Q. And during the course——

Mr. Rose: I move that be stricken as hearsay.

The Court: Motion denied.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

Q. By Mr. Lucas: Did you obtain them from Mr. Smith during the course of your investigation as investigating officer for the Securities and Exchange Commission?

A. I did. And when I obtained them there was not on each of them the figure and letter at the lower righthand corner; I put those on for purposes of identification in keying them to a report which I rendered.

The Court: They still are not identified as letters of people whose signatures they bear. [863]

Mr. Lucas: Yes, I recognize that as to the signature. In view of the stipulation heretofore entered into, I will ask you, Mr. Rose, if you are raising any question as to the authenticity of the signature on the exhibits?

Mr. Rose: As to that phase of the particular exhibits in question, I will stipulate that the handwriting of the persons whose signatures appear to have been affixed to each of these documents is the handwriting of that person.

Mr. Lucas: I will accept that stipulation.

(Testimony of Allan G. Mainland.)

Mr. Rose: That is limited, merely to the question of the signature.

Mr. Lucas: Based on the stipulation and the proffered testimony, I ask that they be made a part of Exhibit 59 in evidence.

The Court: Do you want to examine Mr. Mainland, Mr. Rose?

Mr. Rose: No, your Honor. I don't think I can get him to change his testimony in any respect on this subject.

The Court: It is probably a little late.

Have you got in the record what you want, Mr. Rose, before I rule on this offer?

Mr. Rose: I think, your Honor, my objection is in. Hasn't your Honor ruled on that objection?

The Court: No. We were getting this shaped up preliminarily. I recall your objection. There is an objection that hasn't been ruled on. I am overruling the [864] objection and admitting the documents.

Mr. Rose: An exception will be noted.

The Court: Exception.

The Clerk: They are made a part of Exhibit 59.

(The documents referred to were received in evidence and made a part of Government's Exhibit No. 59.)

Mr. Lucas: Resume the stand, Mr. Carter.

(Witness excused.)

WILLARD EUGENE WARREN

(WARREN C. CARTER)

resumed the stand as a witness on behalf of the government, and having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. I ask you if you remember a man by the name of Michael Burns? A. Yes, I do.

Q. Do you recall approximately when you met Mr. Burns? A. I can't recall the date:

Q. Do you know where Mr. Michael Burns lived?

A. I think it is in Peekskill, New York.

Mr. Rose: Let me have the town.

(The answer was read.)

Q. By Mr. Lucas: Do you recall the circumstances of any conversation with Mr. Burns? [865]

A. Yes, I do.

Q. Where did it take place?

A. It took place in his grocery store.

Q. Well, now, will you state what he said to you and what you said to him?

Mr. Rose: To which objection is made on the following ground: One, no proper foundation has been laid; it calls for hearsay, the same is incompetent and not binding on the defendants on trial.

The Court: Objection is overruled.

Mr. Rose: May an exception be noted?

The Court: Exception.

(Testimony of Willard Eugene Warren.)

The Witness: I told him I represented some Canadian interests that were interested in buying his notes of the Trinidad International Petroleum Company. He said to me, "I don't recollect having any notes in a company like that."

I told him he better look over his records and make sure, because his name appeared to be upon a list of stockholders that hadn't exchanged their stock and notes for this company, he surely must have made the exchange. And he said, "Well, now, what stock is that?"

And I said, "The Great Eastern Natural Gas Company. Several years ago they made an offer to exchange the shares of stock for stock and notes in their company, and you must have some record of that."

He told me that he had a vague remembrance of receiving [866] something of that nature sometime back, but for some reason or other he had never taken any action on it. He said, "Is the stock of the Trinidad Company any good?"

I said, "Well, it certainly is, because you can sell the notes for around \$4.80, and that would leave you with the stock that you would get on the exchange, which also has a value of around \$5.00 a share, and the chances are that the stock will show a much greater appreciation in value over a period of time, because it is headed by a former group of the Pan American Petroleum and Transport and Mexican Petroleum crowd, they own all those properties and took them after the Pan American



(Testimony of Willard Eugene Warren.)

Petroleum and Mexican Petroleum were merged into the Standard Oil of Indiana in 1929, headed by a man named Mr. Danziger who is a very big man in the oil business, and all of his former associates in those companies are now associated with him in this new enterprise. The stocks are traded in the London markets."

I had a paper with me and I showed him the quotations of the various Trinidad stocks and told him the Island of Trinidad was now going to furnish most of the oil to the British Empire; that all the stocks there would show a very rapid appreciation, undoubtedly, and this Trinidad stock was to be classed among those.

He said, "Well, what do you suggest that I do?"

I said, "Well, it is pretty hard for me to tell you [867] what to do, but if I were in your position, I think I would immediately dispatch a letter to the Trinidad Company and tell them that you have never received your right to make this exchange, and you would like to make it now. See what they say."

He said, "Will you give me an idea just what about I should write?"

And I said, "Yes, I will be glad to tell you what to write. On second thought, I think you better direct your letter to the Wake Development Company; they seem to be the fiscal agents for everything that is handled by the Trinidad Company, and you will probably get your stock from them. As I understand, they make the transfer and handle all

(Testimony of Willard Eugene Warren.)  
the transactions.” So then I outlined a form of letter for him verbally, and he said he would send that letter. And he said, “Will you be back to see me?” And I said, “Yes, I will get in touch with you either by ’phone, or I will come and see you in person when I get this neighborhood. I would attend to the matter right away, I wouldn’t let any grass grow under my feet,” I said to him. That was the end of that.

Q. What did you do after that, if anything?

A. Well, when I left him I wrote a note to the Wake Development Company in Los Angeles, addressed it to Mr. Danziger or Miss Faulkner, I wouldn’t remember that, I just directed it to the Wake, to the company, told them [868] that I had made the call and expected an inquiry from him, and to answer him in the usual manner, to regular form which we had outlined to answer to those inquiries, and to advise me when they received the inquiry.

Q. Now, I show you——

Mr. Rose: Just a second.

Mr. Lucas: Pardon me.

Mr. Rose: I move that the answer be stricken, in addition to the grounds interjected to the conversation, on the ground it is not the best evidence, and it is, in part, voluntary and a conclusion of the witness.

The Court: Motion is denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: I show, after having first shown to counsel, a certificate of stock of the Great Eastern Natural Gas Company Incorporated, being Certificate No. 1743 for 100 shares of stock, and I ask you to examine that and tell me if you have ever seen the certificate before?

A. It seems to me I had this certificate in my possession.

Q. And do you recall from whom you received it?

A. Well, I received, to the best of my remembrance, a number of Great Eastern certificates from the Wake Development Company, telling me that they had no use for the particular certificates, and if I had any manner of [869] disposing of them or use for them, I might as well have them; and I believe this was among them.

Mr. Rose: Just a moment. I move that be stricken on the ground it is surmise, conjecture, speculation, no proper foundation laid.

The Court: I consider this preliminary.

The Witness: May I ask you where you received this?

Mr. Lucas: I received it from your counsel, Mr. Ames Peterson.

Q. By Mr. Lucas: I want to direct one further question to you——

Mr. Rose: Just a moment. There is a motion pending here.

Mr. Lucas: The court indicated he considered my questioning preliminary.

(Testimony of Willard Eugene Warren.)

Mr. Rose: I don't consider it preliminary. I may be in error, of course.

The Court: What are you waiting for?

Mr. Rose: A ruling on the motion, your Honor.

The Court: I am not going to rule. I said I consider it preliminary.

Mr. Rose: Pardon me. I didn't hear the exact language.

Q. By Mr. Lucas: I direct your attention to the back of the stock certificate, where, under the words "In presence of" there is a handwritten signature and the [870] words "George Williams," and I ask you to look at that signature and tell me if you signed it.

A. Yes, I did. This also refreshes my memory somewhat more on——

Mr. Rose: Just a second.

The Witness: (Continuing) ——on the call.

Mr. Rose: I think the witness has exhausted his reply to the question against which a motion was addressed.

The Court: Go ahead.

Q. By Mr. Lucas: Go ahead, Mr. Carter.

Mr. Rose: Did your Honor rule on that motion?

The Court: Not yet.

The Witness: I recollect at the time of my call with Mr. Burns now, that he brought out the certificate of the Great Eastern Natural Gas Company and told me that he was going to send it in, along with his inquiry, that he thought that probably by doing that it would make it more definite. I don't



(Testimony of Willard Eugene Warren.)

remember now whether he told me he would send the check along with it at the same time or not, but he was going to make his inquiry and send the certificate in anyhow. Whether he sent the money in at the same time, I don't remember, but I do remember when he brought the certificate out he signed it and he had me witness his signature.

Q. And you then signed your——

A. I signed the name George Williams, the name under which I called on him. [871]

Q. That was the name you used?

A. I used in making the call.

Mr. Lucas: I now offer this certificate in evidence and ask that it be made a part of the Burns file, which is Exhibit 61, your Honor.

Mr. Rose: I will have to add to my objection. At this time, your Honor, I move that the intermittent and several portions of the answer composing the replication to the antecedent question——

The Court: Pardon me. Let me ask a question.

Did this ever get to the Wake Development Company, do you claim, Mr. Lucas?

Mr. Lucas: The testimony of the witness is that he thought he received it back from the Wake Development Company.

The Court: The testimony is too indefinite. I reject the offer.

Mr. Rose: Is his answer stricken?

The Court: No, the exhibit is rejected.

Mr. Rose: How about the—I better renew my motion. I move to strike——

(Testimony of Willard Eugene Warren.)

The Court: Strike all the testimony on the subject.

Mr. Lucas: If the court please, I offer in evidence and ask that it be made a part of Exhibit 61, in evidence——

Mr. Rose: In the interest of time here, I take it you are going to repeat the same situation as arose in connection with that—about three exhibits back? [872]

Mr. Lucas: In connection with the E. Barrie Smith file?

Mr. Rose: Yes. In order to save time, insofar as it appears to me, I will stipulate that Mr. Mainland came into possession of these documents by asking and sending for them to the addressee, like he testified in the other matter, and that the signatures that appear upon these proposed documents are the true signatures affixed thereto by the persons whose names are thereto subscribed.

Mr. Lucas: I will accept that.

Mr. Rose: With that part we will save a lot of time. You now offer them?

Mr. Lucas: I now offer them, based on counsel's statement and the other matters in evidence, these following documents: A letter on the letterhead of the Wake Development Company dated December 30, 1938, signed "A. Faulkner"; another letter on the letterhead of Wake Development Company, dated January 6, 1939, and signed "A. Faulkner"; another letter on the letterhead of Wake Development Company, dated January 25, 1939, signed "A.

(Testimony of Willard Eugene Warren.)

Faulkner", together with the accompanying shares of stock of the Trinidad International, and accompanying profit-sharing notes. I offer them in evidence, all of the documents being addressed to Mr. Michael Burns, and ask that they be made a part of Government's Exhibit 61.

Mr. Rose: To which objection is had on the ground it [873] is wholly irrelevant and immaterial.

The Court: They are admitted.

The Clerk: Part of 61.

Mr. Rose: May an exception be noted?

The Court: Exception.

(The documents referred to were received in evidence and made a part of Government's Exhibit No. 61, in evidence.)

Mr. Lucas: If your Honor please, based on the contents of one of these letters, namely, the letter of January 6, 1939, which reads as follows, "Mr. Michael Burns, 943 Second Street, Peekskill, New York. \* \* \* Dear Sir: We acknowledge receipt of your registered letter of January 4th with enclosures of Certificate 1743 for 100 shares of Great Eastern Natural Gas Company stock, and your check in the amount of \$300.00 made payable to this company", I now reoffer in evidence a Great Eastern Natural Gas Company Incorporated Certificate of stock No. 1743, the same being the one mentioned in the letter, and ask that that be made a part of Exhibit No. 61.

Mr. Rose: I resist the offer on the ground that no proper foundation has been laid, incompetent,

(Testimony of Willard Eugene Warren.)  
irrelevant and immaterial; it bears the background of hearsay.

The Court: Is that certificate made out to Burns?

Mr. Lucas: Yes, your Honor, that is the one made to Mr. Burns, identified by the witness with his signature, and made on the face thereof. [874]

The Court: Somebody will have to get up here and trace——

Mr. Lucas: The letter, your Honor, acknowledges receipt of it by Wake Development Company; and the testimony of the witness heretofore made, but stricken from the record was that he thought he received it back from them.

The Court: He said he received a number of them.

Mr. Lucas: Yes, this among them. He said his recollection was refreshed about the matter.

The Court: He hasn't testified yet, though, that he gave that to you.

Mr. Lucas: I state for the record I received it from his counsel.

The Court: You did. But he hasn't traced it to you.

Mr. Lucas: Very well.

Q. By Mr. Lucas: I now show you again, Mr. Carter, No. 1743 for 100 shares of the Great Eastern Natural Gas Company Incorporated stock, about which you have heretofore testified, and ask you if you delivered that to your attorney Mr. Ames Peterson.



(Testimony of Willard Eugene Warren.)

Mr. Rose: I object to it as leading and suggestive.

The Witness: This document belonged to me, and it was among the papers that I turned over to my attorney to deliver to the Securities and Exchange Commission.

Q. By Mr. Lucas: From whom did you receive it? [875]

A. I received this certificate from the Wake Development Company, Los Angeles, California.

Mr. Lucas: I now reoffer the certificate in evidence, if the court please.

The Court: It is admitted over Mr. Rose's objection.

Mr. Rose: May an exception be allowed?

The Court: Exception allowed.

Mr. Lucas: May it become a part of Exhibit 61?

The Court: It may.

(The document referred to was received in evidence and made a part of Government's Exhibit No. 61, in evidence.)

Q. By Mr. Lucas: Now, do you remember a party by the name of Florence S. Lawyer?

Mr. Rose: Just a second. I don't want to place myself in the position of indicating to the court when to recess, but I thought perhaps we inadvertently had passed the usual time.

The Court: Not inadvertently.

How near are you through with this man, Mr. Lucas?

Mr. Lucas: I talked with counsel this morning

(Testimony of Willard Eugene Warren.)  
and with Mr. Mainland, and reviewed our procedure, and I have assured Mr. Rose that I believe I can finish with my examination of this witness this afternoon. We are now running into some of the duplication of the counts. I just saw that I questioned Mr. Carter on Mrs. Lawyer yesterday afternoon, therefore I will pass from that. I [876] think I have exhausted his testimony on that subject, unless a further check will indicate that I haven't.

Then, I believe, to answer your Honor's question directly, I can say with considerable assurance I will finish with this witness before the adjournment this afternoon.

The Court: All right.

(A short recess was taken.)

Q. By Mr. Lucas: Mr. Carter, do you remember a man by the name of J. Arthur Hazelton?

A. Yes, I do.

Q. Do you remember where he lived?

A. Mantua, New Jersey.

Q. Did you have any personal contact or correspondence or conversation with him?

A. Yes, I had correspondence, I had conversations with him.

Q. Tell me approximately when you first met him.

A. To the best of my recollection it was sometime in 1940.

Q. Did you meet him more than once?

A. Yes, I met him several times.

(Testimony of Willard Eugene Warren.)

Q. Was there any period of time between the time you first met him until you met him subsequently?

A. I don't think I understand what you mean.

Q. Well, have you had more than one personal conversation with him, was there any particular interval of time between your first conversation and your subsequent conversation?

Mr. Rose: I object to the question as purely argumentative; it is self-evident if there was a subsequent conversation an interval of time would have elapsed. I think that the proper objection would be that the question is unintelligible.

The Witness: I first contacted Mr. Hazelton by telephone from Philadelphia.

Mr. Lucas: I will withdraw the question to which counsel objected.

Q. By Mr. Lucas: When and in what manner did you first contact Dr. Hazelton?

A. I called him on the telephone from Philadelphia.

Q. What did you say to him and what did he say to you?

Mr. Rose: Just a moment. I object to that, your Honor, on the ground that no proper foundation has been laid; the same calls for hearsay, it is incompetent and not binding on the defendants now on trial.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

(Testimony of Willard Eugene Warren.)

The Witness: I told him that I understood that he had some Martin Custom Made Tire stock. I asked him to [878] confirm my impression of his ownership of the stock, and he said yes he owned some stock and asked me what I knew about it. And I told him, of course, the company was in difficulty, receivership, and that there were some special interests that were interested in buying the stock, and I could offer him a dollar a share for his stock. Well, he said he didn't believe he would want to sell it, but he said, "I would like to talk to you about it." I said, "Well, I will be very happy to drop in and see you some time when I am over in your locality. That may be within the next week or ten days."

He said, "Well, be sure to do so, because I would like to get any information you have."

About a week or so after that I did go to his dental office in Mantua, New Jersey——

Q. By Mr. Lucas: Let me interrupt you here. That is the same Dr. Hazelton who has heretofore testified in this case? A. Yes, it is.

Q. All right.

A. And I told him my name was Roberts on my first call, and on my——

Mr. Rose: Just a moment. To expedite matters, if you consent that his answer be stricken, ask him to relate the conversation so I can get my objection in.

Q. By Mr. Lucas: Just relate the conversation. [879]



(Testimony of Willard Eugene Warren.)

Mr. Rose: Just a second please. Do you consent that his answer previously given may be stricken?

Mr. Lucas: His immediately preceding answer may be stricken by stipulation.

Mr. Rose: Very well. Is that agreeable to your Honor?

The Court: Yes.

The Witness: I told him——

Mr. Rose: Just a moment. I am objecting to this present conversation that is now being sought to be elicited from the witness upon the grounds; one, that it calls for hearsay, that no proper foundation has been laid, the same is incompetent and is not binding on the defendants now on trial.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: I told Dr. Hazelton that I was the Mr. Roberts that had called him on the telephone. And he said, "Oh, yes, would you mind waiting? I have a patient in my office. Just make yourself comfortable."

And after about 20 minutes he opened his door and said, "Come in." I went into his dental office. I asked him how many shares of Martin Custom Tire stock he had. He said he had 300 or 400 shares of the stock. And I said, "I suppose you paid three or four dollars a share for the [880] stock? He said, "Yes, that's right."

I said, "You don't feel that you would be inter-

(Testimony of Willard Eugene Warren.)

ested in selling it at a dollar a share?" And he said, "No, I think I might hold on to it because I had a letter from the company and they told me there might be a reorganization."

I told him then that I was a trader in securities, that I did have an affiliation with a large oil company in Los Angeles, California, that I represented them in certain matters pertaining to their securities, and they had a stock that showed unusually attractive possibilities. I told him that the men that were connected with this Trinidad Company—and then I named the company, the Trinidad International Petroleum Company—and I said, "The men that head up this company are some of the best known oil men in the business, they comprise the old crowd that headed the Pan American Petroleum and Transport Corporation and the Mexican Petroleum Company, they were more commonly known as the E. L. Doheny oil crowd." I asked him if he had remembered the spectacular market activities of Pan American Petroleum and Transport stock when it was listed on the Stock Exchange, and he said no he didn't remember that so much. And I told him it used to go up three and four hundred dollars a share and down like a curtain on a roller, and that this crowd would probably be able to do the same thing with the Trinidad International Petroleum stock. I told him that the stock [881] was then selling in the neighborhood of around \$12.00 or \$13.00 a unit, that the stock was around five or six dollars a share, and that the

(Testimony of Willard Eugene Warren.)

notes were worth about five, five to seven dollars, depending on how he sold the notes. I told him the stock was closely held and it wasn't easy to get a block of the stock, but that I had some people who had a block of stock that I thought might be interested in selling it. I told him that I thought it would be a very good idea if he bought into this company. He said it sounded very interesting to him. And he also told me, "What do you know about a stock called "Communications Research"? Since I previously had been advised about his holdings in Communications Research, as well as the Martin Custom Made Tire stock by a broker in New York who gave his name, I told him that I thought it was a promising prospect in the television group of stocks, one of the newer television companies, and since that broker had asked me not to take the stock away from him, I told him that I thought he ought to hold on to it, it might have good speculative possibilities. Then I told him—I asked him what other stocks he owned. He got out a list of about five, six, or seven—five or six stocks, to the best of my memory, and gave me the names of them, and I wrote them down. I told him that I thought it might be a good idea if I looked up these stocks and made a report to him about what I thought the future possibilities were on them, and then I [882] would call back and give him my idea of those I think he should sell, and dispose of and put into the Trinidad Oil Company. I told him then that I didn't think he ought to sell

(Testimony of Willard Eugene Warren.)

any of them without my first getting an opportunity to look each one of them up individually, and then make suggestions to him. He said he thought that was an excellent idea. And to the best of my recollection I left him at that time.

Q. By Mr. Lucas: All right. Did you thereafter come back and talk with him again?

A. To the best of my recollection I was back to see him within a very short time. Before I went back to see him I visited A. D. Phelps, a broker in New York, an over-the-counter stock broker. Mr. Phelps had previously given me the name, with the understanding that if I sold him any stock that I would cut him in on any profits that would be made out of the transaction. Mr. Phelps did desire to obtain some shares of stock in the Martin Custom Made Tire Company. He told me he could resell the stock at a profit to him, and he would pay me a dollar for any stock I could take in.

When I left Dr. Hazelton I went back to see Mr. Phelps in New York, and I explained to him the number of stocks that this man had, and I told him that I was interested in selling him a block of Trinidad International Petroleum stock, in which I had a connection in California [883] where I could receive the stock from.

Mr. Phelps said, "Well, that is all right with me. What are you going to do with the stocks when you take them in from him?" Meaning the list of stocks Mr. Hazelton had.



(Testimony of Willard Eugene Warren.)

I said, "I intend to turn them over to you for sale."

He said, "As long as I don't get involved in the Trinidad sale of stock, it will be all right with me. I will sell the stocks, but you will have to get a power of attorney from the man stating that I have the power to turn the money over to you after you sell them."

I said, I knew that, and I would do that, and I told him that undoubtedly he could expect to receive the stocks by registered mail from Dr. Hazelton within a few days, along with a power of attorney and a letter of instructions telling him to sell the securities and turn over the proceeds to me for investment as I saw fit.

Then I returned to Dr. Hazelton and I told Dr. Hazelton that I thought——

Mr. Rose: Are you starting a conversation—May those few words go out? Well, they are innocuous. I take it he is going on with a conversation.

Mr. Lucas: I take it so too.

Mr. Rose: At this time, your Honor, I object to the conversation that is now started to be elicited on the ground that the same is incompetent, irrelevant, immaterial, hearsay, and is not binding on the defendants now on trial. [884]

The Court: Objection is overruled.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

The Witness: I then returned to visit Dr. Hazelton, and at that time I obtained his permission——

(Testimony of Willard Eugene Warren.)

or he consented to send a certain list of securities which we had talked about to be sold, with a power of attorney and letter of instruction to A. D. Phelps, with further instructions to turn the proceeds of the sale over to me in New York.

Q. By Mr. Lucas: Now, I show you Mr. Witness, a letter dated July 6, 1938, heretofore marked as Government's Exhibit 23 in evidence, and ask you if that is your signature "A. L. Roberts" on the second sheet thereof. A. Yes, that's mine.

Mr. Rose: Let me take a look at it. It will save time, because I will know if I want to object or not. This is already in?

Mr. Lucas: That's right.

Q. By Mr. Lucas: I want you to notice the date, first, of this document, Mr. Carter. The exhibit is dated in July, 1938.

A. Yes, I noticed that. I was in error about the date that I called, but that can be expected. I notice this is 1938.

Q. Do you now desire—— [885]

Mr. Rose: Just a second. Wait a moment. I move that his answer be stricken as voluntary, induced by a leading and suggestive question. The direct testimony of this witness, as your Honor will recall, is that he first met Dr. Hazelton in 1940. Now counsel is directing his attention to an exhibit, in order to suggest to this witness that he go back two years before that time. I think it is grossly improper.

Mr. Lucas: I merely wanted, if the court, please,

(Testimony of Willard Eugene Warren.)

to give the witness an opportunity to correct his answer heretofore made, if he so desires.

The Court: Continue.

Q. By Mr. Lucas: Do you want to correct your statement heretofore made that you first met Dr. Hazelton in 1940?

A. Yes, I want to correct that, because of the time element. I can't be correct on dates all the time. That was so long ago, while the instances are firm in my mind, the dates may be wrong, and that is the reason I have usually said that I can't be sure of the dates. I do recollect now that I see this letter that it was previous to the time, and it couldn't have been in 1940, on further refreshing my mind, because I was doing other things at that time also. I don't know why I said '40, but it is one of those things.

Q. By Mr. Lucas: Directing your attention, again [886] to the exhibit, did you receive the stocks which are reflected on that exhibit from Dr. Hazelton?

Mr. Rose: I object to it as immaterial and not binding on the defendants. It is *res inter alios acta*.

The Court: Overruled.

The Witness: May I read this?

Q. By Mr. Lucas: Certainly, if it will help you.

A. Yes, this letter is one I wrote to Dr. Hazelton which confirmed the agreement that I entered into with him, and as I have outlined here in my testimony.

(Testimony of Willard Eugene Warren.)

Q. Did you receive the proceeds from the sale of that stock?           A. Yes, I did.

Q. What did you do with the proceeds?

A. Well, at that time I communicated with the Wake Development Company, Mr. Danziger was there at the time, I believe——

Mr. Rose: I move that be stricken as a conclusion of the witness.

The Court: Stricken.

The Witness: (Continuing) I communicated with the Wake Development Company in Los Angeles and told them that I wanted to make a transaction, that I had made certain representations to Dr. Hazelton about the Trinidad International Petroleum stock. I told them that I was representing myself as A. L. Roberts, and that I was making [887] arrangements to make a sale of Trinidad International Petroleum stock and its notes, and that they would receive the regular stipulated amount, which was one-third of any proceeds I received from the sale, and that I would retain the balance for myself.

Mr. Rose: I move that entire answer be stricken on the ground that it is hearsay, not the best evidence.

The Court: The motion is denied.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

Q. By Mr. Lucas: All right. Now, thereafter did Dr. Hazelton become a purchaser of any Trinidad stock?



(Testimony of Willard Eugene Warren.)

A. If my memory serves me correctly, upon sending the funds, which I did, to Los Angeles for stock, I asked them to make certificates in my name, or in the name of A. L. Roberts, and to forward them to me, and I would give them to Dr. Hazelton, and later have Dr. Hazelton transfer them.

That is the best of my recollection now of the transaction. It was something like that, anyhow.

Q. Do you recall from memory the number of shares of stock that Dr. Hazelton acquired in this transaction?

A. Well, I think it was around 600 shares, four or five hundred, six hundred, I can't be definite on it.

Q. I show you Government's Exhibit 25, in evidence, consisting of three letters from the Wake Development Company, [888] signed "J. M. Danziger" in two instances, "A. Faulkner" in the other, and ask if the use of those exhibits would refresh your recollection as to the transaction.

Mr. Rose: Just a second. Now, may I have the question?

(The question was read.)

Mr. Rose: I object to it as leading and suggestive. I submit that the rules of evidence are quite clear that the witness may refresh his recollection or resort to some memorandum made by him or by some memorandum in which he participated at or near the time. The question in its present form is clearly leading and suggestive and incompetent.

(Testimony of Willard Eugene Warren.)

The Court: Who is that correspondence between?

Mr. Rose: Between J. Arthur Hazelton and the Wake Development Company; and it has gone in, your Honor, by the foundational testimony of Dr. Hazelton that he received these particular communications in the mail. We have a personal conversation that it is a communication he received from Wake. Now, they are in evidence. Now the present question seeks to have him read something and then have him amplify this tale he is telling by reading these letters.

The Court: Don't you believe what he is telling, Mr. Rose?

Mr. Rose: Frankly, I don't think—there are certain things that, undoubtedly, are correct that he did say, your Honor; but there are certain things that he said in connection with this transaction with Hazelton that I disbelieve totally and completely.

The Court: How would this correspondence between third parties aid his recollection, Mr. Lucas?

Mr. Lucas: I don't know. I take it from reading it myself that it is corroborative and would aid him in determining whether it was six or seven hundred shares, because the exact amount of shares sent to Dr. Hazelton is reflected in that letter.

The Court: It would be leading in effect.

Mr. Rose: Dr. Hazelton, your Honor, has——

Mr. Lucas: I will withdraw it.

The Court: It is withdrawn.

Q. By Mr. Lucas: I show you Government's

(Testimony of Willard Eugene Warren.)

Exhibit No. 27 in evidence, and call your attention to a document that is attached or clipped onto the back of this certificate, denominated here "Irrevocable stock power," the signature thereon is "Arthur L. Roberts," and ask you if that is your signature.

A. A. L. Roberts.

Q. Yes, A. L. Roberts. Did I say something different? I am sorry. Is that your signature?

A. That is my signature.

Q. Is the handwriting—— [890]

A. That is my handwriting, yes.

Q. —with the signature over on the left-hand side above the word "Witness", where we find "B. M. Walker"—do you know whose signature that is?

A. No, I don't remember that.

Mr. Rose: What is the answer?

(The answer was read.)

Q. By Mr. Lucas: I show you Government's Exhibit 28, being a stock certificate of Trinidad International Petroleum Limited, to which there is also attached an irrevocable stock power, and direct your attention to the name and signature "A. L. Roberts," and ask you if you signed that, and if it is your signature?

A. Yes, that is my signature. The writing is also mine for the transfer of 100 shares of stock in my name. This is 100 shares of notes.

Q. You are speaking of Exhibit 27?

A. It was transferred out of my name into Dr. Hazelton's name.

(Testimony of Willard Eugene Warren.)

Q. I show you now, Witness, Government's Exhibit 29, in evidence, being a cashier's check payable to A. L. Roberts, drawn on the Farmers National Bank of Mullica Hill, New Jersey, particularly I direct your attention to the endorsement on the back of the check "A. L. Roberts" and ask if that is in your handwriting?

A. No, that's not. [891]

Q. Did you have any conversation with Dr. Hazelton about that check? A. Yes, I did.

Q. State that conversation, please.

A. I wrote a letter to Dr. Hazelton——

Mr. Rose: Just a second. He has been asked to relate a conversation, and now he is starting to tell us about something else. Mr. Lucas, don't you think you ought to have him stay with the conversation?

Mr. Lucas: What is the pending question?

(The question was read.)

Q. By Mr. Lucas: Will you answer the question to the best of your ability, please?

A. Well, this check resulted from correspondence I had with Dr. Hazelton.

Q. I show you, then——

Mr. Rose: I move that the answer be stricken on the ground that it is not responsive. He was asked if he had a conversation in respect to this check.

The Court: Stricken.

Q. By Mr. Lucas: I show you, Mr. Witness, Government's Exhibit 39, and ask you if that let-



(Testimony of Willard Eugene Warren.)

ter in its entirety, and the signature thereon, is your handwriting.

A. This is my handwriting.

Q. Did you write the letter?

A. Yes, I did. [892]

Q. Is that the letter that you spoke of a moment ago?

A. Yes, it is.

The Court: Gentlemen, I will have to ask your indulgence, I will have to leave the bench early, again, to meet a visitor. We will resume at 2:00 o'clock.

(Whereupon, at 11:50 a.m., January 25, 1945, a recess was taken until 2:00 o'clock p.m.)

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Los Angeles, California,

Thursday, January 25, 1945, 2:00 p.m.

WILLARD EUGENE WARREN

(WARREN C. CARTER),

resumed the stand as a witness by and on behalf of the Government, and having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. Mr. Carter, before the noon recess we were starting into the 1940 transactions between you and Dr. Hazelton. Did you have any communica-

(Testimony of Willard Eugene Warren.)  
tion or correspondence with Mr. Danziger or the Wake Development Company after you contacted Dr. Hazelton in 1940?

Mr. Rose: I object to the form of the question as leading and suggestive. There is a conflict in the testimony on the part of this witness with his observations as to when and what conversation and when the transaction occurred.

The Court: You may answer.

The Witness: Yes, I had communications by mail with Mr. Danziger in Los Angeles. I wrote him and told him that I——

Mr. Rose: Just a minute. I object to it on the ground that no proper foundation has been laid; it is a conclusion and opinion of the witness, and not the best evidence.

The Court: Objection overruled. [894]

Mr. Rose: May an exception be noted?

The Court: Allowed.

The Witness: (Continuing) I wrote him and told him that I was going to try to make a new deal, a re-load deal on the Hazelton account, which I had sold previously in 1938.

Mr. Rose: Let me hear that.

(The answer was read.)

Q. By Mr. Lucas: Go ahead.

A. I asked him at the time if he had any material that he could furnish me in the form of a letter as to any recent activities or new activities that might take place, and I stated at the time, generally, that my thought was that I could get about

(Testimony of Willard Eugene Warren.)

\$5000.00 minimum from Mr. Hazelton, and that I needed something in the form of a new letter. He wrote me a letter back, and he sent me a letter, I can't remember the contents of it all now, but it was a letter addressed to A. L. Roberts——

Mr. Rose: I move that be stricken as not the best evidence, no proper foundation——

The Witness: And to the best——

Mr. Rose: Just a second.

The Court: Do you have the letter?

The Witness: No, I don't.

The Court: Do you have it, counsel for the government?

Mr. Lucas: I take it from what the witness has gone [895] along on, your Honor, that we are now getting to Exhibit 31. May I have it? It is in for identification. Your Honor may not remember it, but it was marked for identification when Dr. Hazelton was on the stand. He testified that it was a copy made in his handwriting of a letter I think this witness is referring to now.

The Court: You might show it to Mr. Rose.

Mr. Rose: I recall it very well, your Honor. May I point out to your Honor the state of the record in connection with this item? This is a letter in the handwriting of the witness Hazelton that he said he made of some letter that he had received in the mails from this witness——

Mr. Lucas: No. He received——

Mr. Rose: Just a minute. I am addressing the court, and I think I know what I am talking about.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: I am sorry, Mr. Rose.

Mr. Rose: I will have to start over again. The state of the record will substantiate this in connection with this particular Exhibit 31. The witness Hazelton, your Honor, stated that he had a conversation with this witness about getting some kind of a letter from him; that he received a letter from him, this witness, with instructions to return it to him, not to Wake or Danziger or anybody, but to return it to this man here. He said he thereupon made in his own handwriting what he testified [896] to was a copy of the letter that was sent to him from Roberts or this witness, and that this letter purports to be a copy of a letter that this witness sent to Hazelton, and which Hazelton, in turn, returned to this witness. If your Honor will recall, this inquiry concerning the Hazelton transaction is reflected in Exhibit 92. Your Honor will recall that Mr. Mainland went in at great length making inquiry about whether Paddleford discussed certain things. This letter purports to be signed by Wake Development Company by one of its directors, Paddleford, and Mr. Mainland in his examination under Exhibit 92 here, went in at great length, not asking about whether a letter of this character had been written, but drawing in his examination, canvassing the substances and the matters contained in this particular letter, certain alleged conversations that Paddleford had had with Danziger about certain matters, and your Honor will remember there was a great deal of it, and



(Testimony of Willard Eugene Warren.)

I asked Mr. Mainland whether he told or informed Mr. Danziger that there was any purported letter or forged letter of that fact, and he said no he definitely kept that information from him.

There ought to be a limit as to how far—your Honor has a discretion, I recognize, in a type of case of this kind in admititng evidence, but counsel is attempting now to build up his own straw men and knock them down, he is now going to attempt to take a letter, that your Honor has before [897] him now, written by Hazelton, which purports to be a copy of another communication, which, in turn, purports to be signed by this Doctor here, and which manifestly is not the case, and he is going to try and bind us now that such communication was, in fact, sent out; and now he is trying to lay the foundation to introduce this double, double hearsay.

The Court: Do you have the letter that was sent to you?

The Witness: No, I haven't it, your Honor.

The Court: Do you remember who it was signed by?

The Witness: Yes, it was signed by Paddleford.

The Court: How would it happen to be signed by him when all your communications were with Danziger previously?

The Witness: This letter was supposed to be a letter to assist me in making a particular sale to Mr. Hazelton.

(Testimony of Willard Eugene Warren.)

The Court: Do you know what happened to the letter?

The Witness: I suppose it has been lost. I looked all through the papers I had and didn't find it.

The Court: And you did show it to Hazelton?

The Witness: Yes, I did.

The Court: You don't know whether he took a copy of it or not?

The Witness: Yes, he wrote it down——

The Court: Wait a minute. In your presence?

The Witness: Yes.

The Court: And gave you back the original?

The Witness: That is my recollection.

The Court: But you are not sure of it?

Mr. Lucas: The testimony——

Mr. Rose: Pardon me. Your Honor, I refer the court to the record, the testimony of Dr. Hazelton. Hazelton's testimony is that he received that particular letter in the mail and was to mail it back to this witness, and that he did mail it back, and that he wrote that himself. Your Honor, I challenge counsel to establish a scintilla of evidence contrary to the state of the record as reflected by the remarks made by me to your Honor.

The Court: I think under the circumstances, you object to the letter coming in, Mr. Rose, I will let the witness—the original is lost, I will let him summarize what is in it.

Mr. Rose: Here is the situation, your Honor. This doesn't purport to be a letter by Danziger or

(Testimony of Willard Eugene Warren.)

the secretary or anybody; it is manifestly a forgery. It is a letter by Paddleford, it is supposed to be one by Paddleford——

The Court: Forgery by whom?

Mr. Rose: I don't know. How can we tell? Manifestly, from the examination of Mr. Danziger—I assure your Honor Danziger would probably have shot this fellow if he had any idea that a fine gentleman like Paddleford's name had been used in this manner. My point is this, your Honor: We are being saddled here by what? This gentleman here [899] produced, when he discreetly desired to produce, the various communications, including envelopes, way back in 1937. Now, it is very convenient for the government, but it violates the fundamental law of the land, to put a man on who is a confessed and recalcitrant defendant in this action, and who has received, manifestly, the benefits by reason of some deal made with the prosecution——

The Court: Mr. Rose feels very strongly about this. I am a stranger in the community, I don't know your names and your personalities, is it necessary to your case to bring in the name of another man here whose name it has been suggested might have been forged? Is it necessary to the government's case to do that?

Mr. Lucas: I don't see how we can avoid it and bring in this particular phase of the record.

The Court: Well, is that necessary to your proof of the Hazelton count? That is my question.

Mr. Lucas: It is part and parcel of the trans-

(Testimony of Willard Eugene Warren.)

action. Now, to answer your question and tell you whether it is an essential part of the matter, I just can't say, your Honor.

The Court: You have already proven certain transactions, which if believed by me and not refuted, would support your allegations on the Hazelton count.

Mr. Lucas: I understand that. I want to say I disagree with everything counsel said, mostly, except when [900] I was interrupted I was just about to concur with counsel that Dr. Hazelton's testimony from the stand was different from Mr. Carter's recollection of the deal. Dr. Hazelton testified, as counsel indicated, that Mr. Carter gave him this original letter, showed it to him, and he asked permission from the witness Carter to keep it and retain it sufficiently long to make a copy, and that he did make a copy, and I agree with counsel my recollection of Dr. Hazelton's testimony was that he then thereafter sent the letter by mail to Mr. Carter.

The Court: You claim you got a letter from Danziger saying that——

The Witness: I heard——

The Court: Wait a minute. You claim you got a letter from Danziger saying that he had gotten Dr. Paddleford to sign this letter and was sending that for your use?

The Witness: No, no I don't claim that. I claim I received this letter, such as a piece of sales litera-



(Testimony of Willard Eugene Warren.)

ture, with the notation to the effect, "You may find this useful."

The Court: There is no other letter that I recall came in here with Dr. Paddleford's signature.

Mr. Lucas: We don't contend that Dr. Paddleford ever wrote that letter or knew the slightest thing about it. I want the record to be clear on that.

The Court: It is too vague. I am going to exclude the letter. [901]

Mr. Rose: That particular letter, you brought it out in some questions of yours of Dr. Hazelton; it was on plain paper, it was not on stationery of the Wake Development Company or anybody else. That is the state of the record. It was on a plain sheet of paper.

The Court: The letter will not come in and I will exclude any testimony about it.

Mr. Lucas: Very well.

Q. By Mr. Lucas: Now, then, to pick up, Mr. Carter—and omitting anything you said to Dr. Hazelton about this so-called letter, or omitting anything about a communication with Mr. Danziger about this letter, proceed with what you stated to Dr. Hazelton after your communications with Wake.

Mr. Rose: Just a minute. I object to the form of the question on the ground that it assumes that the communication was from Wake.

The Court: He may answer.

The Witness: I called Dr. Hazelton on the telephone from New York and told him I was going to visit him because I had a matter I wanted to talk

(Testimony of Willard Eugene Warren.)

over with him. And in a few days I went down to see Dr. Hazelton in Mantua, New Jersey, in his office. On the occasion of my visit there I told him that——

Mr. Rose: Just a second. I object to the conversation that this witness is about to relate upon the grounds [902] that no proper foundation has been laid, that it is, manifestly, hearsay; the same is not binding or competent on the defendant.

The Court: He may answer.

The Witness: I explained to Dr. Hazelton that the stock of the Trinidad International Petroleum had not gone up as high in price as I had anticipated during the two years or a year and a half interim that I had sold him his previous stock or had been instrumental in getting him to acquire his holdings in the company, but that I had every reason to believe that soon there would be a deal culminated whereby a certain number of shares of stock would be taken up by a syndicate group. I told him that his holdings in the company were not adequate enough to entitle him to participate in that sale, so I told him that I wanted to increase his holdings in the company by an additional thousand shares of stock. He very frankly told me that he could not think of such a thing; that it was beyond his ability to furnish any more funds, and he told me that he didn't have any more securities. He showed me some royalties that he had bought since I sold him the last time, amounting to \$2500.00, stating that that was the last money he had, and he couldn't put

(Testimony of Willard Eugene Warren.)

in any money. I then asked him if he couldn't put in a smaller amount, and he reiterated what he said, he just simply was strapped, he had no more money to put into anything and he couldn't go [903] any further.

At that time I told him that I was contemplating a trip to Los Angeles, and that from Los Angeles I was coming back to New York, and that I was going down to Trinidad to work on this arrangement whereby we were going to dispose of the stock; that I would take care of him in some manner, shape or form, regardless of whether his holdings were large enough to warrant his participation in the syndicate. He said, well, that would be fine, he hoped I would take care of it. And I said, "Of course, the expense of this trip is going to be considerable. It is going to run into a great deal of money, and I would like to have you underwrite a part of that cost." He said, Well, he would try to do what he could. And then I pinned him down and he said, "The most I could advance toward that expense would be \$300.00." Then I told him that wouldn't be sufficient, that the least I could accept would be a thousand dollars. We finally arrived at \$700.00 as the basis, but I would have to wait for the balance of the \$400.00. At that time I agreed that he should be entitled to receive another hundred shares of stock for the money that he would advance toward this expense, and, namely, would transfer 100 shares of the stock that he had in my

(Testimony of Willard Eugene Warren.)

name and was holding for me, in consideration for this money.

He told me he didn't have the money right then and there, and asked me where he could mail it to. I told him [904] he could mail the check out to the Wake Development Company in Los Angeles in care of A. L. Roberts, and that I would receive it when I arrived out there. Then I left. I wrote to Mr. Danziger and told him he would receive a check, that I had been unsuccessful in getting any more than \$300.00 out of Mr. Hazelton, and explained to him that when the check came through that he could either cash it or re-forward it to me and I would cash it.

I received a letter back from him——

Mr. Rose: Just a moment. I move that the declarations of this witness as they purport and relate to a letter he said he wrote to Danziger be stricken on the grounds, severally, that it is not the best evidence, calls for a conclusion, conjecture, speculation on the part of this witness.

The Court: Motion denied.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness (Continuing): I later received a letter from Los Angeles stating they had received the check for \$300.00 and had put the check in for collection, and after the check had cleared they would send me the usual \$200.00, less wiring charges.

Q. By Mr. Lucas: Did you receive it?

A. I later did receive the money, yes.



(Testimony of Willard Eugene Warren.)

Q. Mr. Carter, I show you a letter, Government's Exhibit No. 34, in evidence, and ask you to look at the [905] signature and tell me if you wrote and signed it and sent it to Dr. Hazelton?

Mr. Rose: Is that an exhibit in the case?

Mr. Lucas: It is; Exhibit No. 34, counsel.

The Witness: Yes, this is my letter.

Q. By Mr. Lucas: I show you now Government's Exhibit 33 and ask you if you wrote and signed that and sent it to Dr. Hazelton?

A. Yes, I wrote this letter.

Q. I show you now Government's Exhibit 32 containing some handwritten figures, figures in handwriting as distinguished from typing, and ask you if those are in your handwriting.

A. May I refer to that letter again, the first one?

Q. Yes, certainly.

A. May I refer to this letter?

Q. Certainly, if it is necessary for you to answer.

A. I wrote this letter to Dr. Hazelton and mailed it out to Los Angeles, California, to Mr. Danziger, and asked him to remail the letter to Dr. Hazelton so as to reflect the fact that I was in Los Angeles.

Mr. Rose: I move that that be stricken on the ground that it is a conclusion of the witness, not the best evidence, no proper foundation laid.

The Court: What number did you just refer to?

Mr. Lucas: Exhibit No. 34. [906]

The Court: Motion denied.

Mr. Rose: May an exception be noted?

The Court: Allowed.

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: I refer you again, Mr. Carter, to Exhibit No. 32, to the hand-written figures thereon, and ask you if those are in your handwriting.

A. They are in my handwriting.

Q. Do you recall when you made those figures?

A. No, I can't.

Q. In connection with the exhibit I am about to hand you, I first show to council——

Mr. Rose: Just a second. You showed the witness some papers; did you put them down here?

Mr. Lucas: There they are right there (indicating).

Q. By Mr. Lucas: I show you, Mr. Carter, a white sheet of paper dated March 5, 1940, from which the address has apparently been cut off, with the salutation: "Dear Dr. Hazelton," and ask you if that was cut out of that letter by you?

A. Is this one of the letters turned over to you?

Q. It is, by your counsel Mr. Peterson.

A. Yes, this is a letter, a copy of one of the many letters which I received from Wake.

Q. From whom did you receive it?

A. The Wake Development Company.

Mr. Rose: What is the date of that? [907]

Mr. Lucas: March 5, 1940.

This letter I offer in evidence and ask that it be made a part of Government's Exhibit 27. Have you any objections, Mr. Rose?

Mr. Rose: Yes. Just a second.

I object to it on the ground there is no proper

(Testimony of Willard Eugene Warren.)

foundation laid, it is conclusion and opinion of the witness; the same is incompetent.

The Court: Complete the link, Mr. Lucas, you will have to testify that is one of the letters——

Mr. Rose: I am waiving that phase of it, your Honor. As a matter of fact, he is under oath now, and that statement to the court would be deemed in the form of testimony, in response to the witness' question as to where he got it, and I so recognize it, and I am not making an issue of that phase of the foundation.

The Court: The objection that you have made to its introduction is overruled.

Mr. Rose: May an exception be noted?

The Court: An exception is allowed.

Mr. Lucas: I ask that it be made a part of Exhibit 27, if the Court please, because the letter—the first two lines say, “We are in receipt of two stock powers of attorney signed by A. L. Roberts”; those two stock powers are 26 and 27 in evidence, and I ask that this exhibit, this letter, be made a part of Exhibit 27, if there is no [908] objection.

The Court: It may be done.

(The document referred to was received in evidence and made a part of Government's Exhibit No. 27, in evidence.)

Q. By Mr. Lucas: I show you, Mr. Carter, Government's Exhibit 17 in evidence, being photostatic copies of several post office money orders, I think ten in number. I turn to the first one and direct your attention to the signature George Carlton, and

(Testimony of Willard Eugene Warren.)

ask if that is your signature or photostatic copy thereof.      A. Yes, it is.

Q. Did you receive the money represented by that post office money order?      A. I did.

Q. I show you the next one, George Carlton, and ask you if that is your signature?      A. It is.

Q. Did you receive the money represented by that post office money order?      A. Yes, I did.

Q. I show you the next one, signature George Carlton, and ask you if that is your signature?

A. It is.

Q. Did you receive the money represented by that?

A. I did, and that is my signature. [909]

Q. I show you the next one and ask you if the signature George Carlton is your signature.

A. It is.

Q. Did you receive the money represented by that?      A. I did.

Q. And I will ask you to look at the next one and ask you if that is your signature?      A. It is.

Q. And did you receive the money represented by that?      A. Yes, I did.

Q. I show you the next one with the signature George Carlton; is that your signature?

A. Yes, it is.

Q. Did you receive the money represented by that?      A. Yes, I did.

Q. From whom did you receive these various money orders?



(Testimony of Willard Eugene Warren.)

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness.

Mr. Lucas: I don't see how it could be an opinion, your Honor.

The Court: They are all signed by——

Mr. Lucas: The applications connect them up, your Honor, the other exhibits, the original applications on which these were issued are in evidence and were signed by [910] Mr. Danziger.

The Court: Ask the witness, first, does he know who sent them to him.

Q. By Mr. Lucas: Do you know who sent these to you?      A. Will you let me look at them?

Q. Yes. Just the first six, I believe is all I called your attention to.

The Court: While he is looking at them, what was your proof on the money orders in connection with the defendant Danziger?

Mr. Lucas: The original applications are in evidence, and they are signed in some instances, I think, by the alias "A. Levy," and the other alias of "T. Mack" and the stipulation is that the signatures thereon, "A. Levy" and "T. Mack" are the signatures of Mr. Danziger.

The Court: There was no identification from the stand, was there, by other witnesses, that you recall?

Mr. Lucas: In that connection, your Honor, we had the post office employee who identified them as original documents.

(Testimony of Willard Eugene Warren.)

The Court: There was no identification by the defendant Danziger visually, was there?

Mr. Lucas: No, your Honor.

The Witness: May I talk about this?

Mr. Lucas: You have examined them. Are you ready to answer? [911]

The Witness: I am ready to answer on the last four.

Q. By Mr. Lucas: We hadn't got to those yet. Are you ready to answer on the first six?

A. Well, the first six represent \$530.00.

The Court: The question is do you know who sent them to you.

The Witness: Offhand, I don't.

Mr. Rose: May I have the exhibit, please?

(The document was handed to counsel.)

Q. By Mr. Lucas: Now, I direct your attention to the remaining four money orders, photostatic copies thereof, and direct your attention to the signature "A. L. Roberts"; did you sign that?

A. Yes, I did.

Q. Did you receive the money represented thereby?      A. Yes, I did.

Q. Do you know who you received it from?

A. Yes, I do.

Q. From who did you receive it?

A. I received it from Mr. Hazelton.

Q. I show you the next one, is that your signature, "A. L. Roberts"?      A. Yes, it is.

Q. And did you receive the money represented by that money order?

(Testimony of Willard Eugene Warren.)

A. I did. I received it from Mr. Hazelton. [912]

Q. And I show you the next one, "A. L. Roberts," and ask you if that is your signature?

A. It is.

Q. And did you receive that money?

A. I did; from Dr. Hazelton.

Q. All right. Now, I show you the final and last one of that series of four; is that your signature, "A. L. Roberts"?

A. Yes, it is.

Q. Did you receive that money?

A. Yes, I did, from Dr. Hazelton.

Mr. Rose: What is that exhibit number, please?

Mr. Lucas: The entire matter is Exhibit 17.

Mr. Rose: Thank you.

Q. By Mr. Lucas: I call your attention to the first six of these post office money orders, again; they bear date——

Mr. Rose: Now, I object to that, because the witness has clearly indicated that he has no knowledge of those particular exhibits, after examining them, and I am objecting to your leading or suggesting any matter to a, manifestly, hostile witness.

Mr. Lucas: I hadn't completed my question, if the court please. May I complete my question?

The Court: You may.

Q. By Mr. Lucas: I call your attention to the fact [913] that each of these photostatic copies of money orders are dated December 26, 1940, and each of them bear the typed name "Mary D. Briggs, Postmaster" in each instance; does that refresh

(Testimony of Willard Eugene Warren.)

your recollection as to whom you received these from?     A. Yes——

Mr. Rose: Just a moment. I object to that as leading and suggestive, argumentative and, manifestly, not the form of a document from which this witness can refresh his recollection as to the source of the person that assertedly sent them to him.

The Court: Did you get money orders from Los Angeles at that time?

The Witness: Yes, I did.

The Court: Did you get them from more than——

The Witness: I received them from——

The Court: Wait a minute. Did you get them from more than one source?

The Witness: No, I did not.

The Court: Do you know the source from which you received money orders from Los Angeles at that time?

The Witness: Yes, I do, your Honor.

The Court: State what it was.

Mr. Rose: Just a moment. May I reincorporate my objection to the question as applicable to the supplemental question augmented by the court's inquiry? [914]

The Court: The objection is overruled.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

What source did you get the money orders from?

The Witness: I received these from J. M. Danziger. And to the best of my recollection, the send-



(Testimony of Willard Eugene Warren.)

ers at the time I received them were noted as "Levy", if my memory is correct.

Mr. Rose: I object to that, your Honor, on the ground——

The Court: How would you know that?

The Witness: When you receive these certificates, they usually—I think they usually make the notation on it who the sender is, if my recollection is correct.

The Court: I haven't seen a money order for a long time. Is that correct?

Mr. Lucas: Well, I am frank to say I do not know.

Mr. Rose: I am frank to say that that is not a fact.

The Witness: I also remember that I received \$530.00 from the Wake Development Company through one of the various names that was used to send me money about this time from Los Angeles, and I never received any money from any other source from California other than that; so, therefore, it must be from that source.

Mr. Rose: I move that his answer be stricken; that it is a conclusion based on conjecture, speculation, no proper foundation laid, and I call your Honor's attention to the fact that without equivocation this witness gave a [915] definite and unqualified response to a direct examination.

The Court: The part of his answer that he received money only from one source in California may stand. The rest is stricken.

(Testimony of Willard Eugene Warren.)

Q. By Mr. Lucas: Can you now answer the question, Mr. Carter, from whom you received the money represented by those post office money orders?

Mr. Rose: I object to it as already asked and answered.

The Court: Objection sustained.

Q. By Mr. Lucas: I show you Government's Exhibit 22, in evidence, being a photostatic copy of a post office money order, on the reverse side there is an endorsement, and I will ask you to look at that and tell me if that is your signature or your handwriting.

A. Yes, it is.

Q. Did you receive the money represented by that?      A. Yes, I did.

Q. On the face of this document, opposite the word "From" there is typed in the word "A. Levy"; can you tell me from whom you received that money?

Mr. Rose: I object to it as calling for a conclusion and opinion of the witness.

The Court: He may answer.

The Witness: Yes, I received that from Mr. Danziger.

Mr. Rose: I move that be stricken as a conclusion of [916] the witness.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Allowed.

Q. By Mr. Lucas: I show you Government's Ex-

(Testimony of Willard Eugene Warren.)

hibit 18 in evidence, and call your attention to a photostatic signature on the back and ask you if that is your signature?      A. It is.

Q. Did you receive the money?      A. I did.

Q. That is represented by the Western Union money order?      A. That's right, I did.

Q. And from whom did you receive it?

A. Mr. Danziger.

Mr. Rose: I move that the answer be stricken for the purpose of inserting an objection.

The Court: Well, it is stricken. Make your objection, Mr. Rose.

Mr. Rose: I object to it on the ground that it calls for a conclusion and opinion of the witness. No proper foundation laid.

The Court: The objection is overruled.

Mr. Rose: May an exception be noted?

The Court: Exception noted. What was your answer?

Q. By Mr. Lucas: From who did you receive it?

A. Mr. Danziger.

Q. I show you Government's Exhibit 19 in evidence, and call your attention to a photostatic reproduction of the signature or writing "George Carlton," and ask you if that is your handwriting.

A. It is.

Q. Did you sign that?      A. Yes, I did.

Q. Did you receive the money represented by the Western Union money order, a photostatic copy of which is attached to the exhibit?

A. Yes, I did.

(Testimony of Willard Eugene Warren.)

Q. And from whom did you receive it?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness, no proper foundation laid.

The Court: Overruled.

The Witness: Mr. Danziger.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

Q. By Mr. Lucas: I show you Government's Exhibit 20 in evidence, and direct your attention to a photostatic endorsement on the back thereof, "George Carlton"; is that your signature?

A. It is.

Q. Did you receive the money represented by the original Western Union money order? [918]

A. Yes, I did.

Q. And from whom did you receive it?

Mr. Rose: Just a moment. I object to it as calling for a conclusion of the witness, no proper foundation laid.

May I take the witness, incidentally, at this point on voir dire as to this limited subject matter?

The Court: No, I don't think so. Objection is overruled.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

The Witness: I received that from Mr. Danziger.

Q. By Mr. Lucas: I show you Exhibit 21, Government's Exhibit 21, and call your attention to the signature on the reverse side of the money order, "George Carlton"—



(Testimony of Willard Eugene Warren.)

Mr. Rose: Your Honor, we haven't any photo-stats of any of the money orders there—yes, of the money orders; but these others that have been identified are Western Union, and in one instance Postal checks.

Q. By Mr. Lucas: Is that your signature on the back thereof? A. It is.

Q. Directing your attention to the money order itself, did you receive that money? A. I did.

Q. And from whom did you receive it?

Mr. Rose: I object to that as calling for a conclusion [919] and opinion of the witness, no proper foundation laid.

The Court: Objection overruled.

Q. By Mr. Lucas: From whom did you receive it? A. Mr. Danziger.

Mr. Lucas: May I have Exhibit 54? No, I am sorry, I have it here.

Q. By Mr. Lucas: Mr. Carter, do you remember a man by the name of Harold McCoy?

A. Yes, I do.

Q. Did you ever see him before you saw him in the court room in the trial of this case?

A. Yes, I did.

Q. Do you recall approximately where and when?

A. Yes, I saw him in Cadiz, Ohio.

Q. Can you tell me approximately the time?

A. I think it was in 1938.

Q. Did you have any conversation with him?

A. Yes, I did.

(Testimony of Willard Eugene Warren.)

Q. What was the conversation concerning, what was the subject matter of it?

Mr. Rose: Just a moment. Are you asking him for the conversation or are you asking him for his conclusion as to what the subject matter was?

Mr. Lucas: The reporter will please read the question.

The Court: No, don't read it.

Mr. Rose: I object to it on the ground that no [920] proper foundation has been laid, and it calls for hearsay, and it is incompetent and not binding on the defendants on trial.

The Court: Overruled.

The Witness: I called at Mr. McCoy's house and had a conversation with him. I asked him if he owned any Trinidad stock and notes. I told him my name was A. L. Baker, that I represented a stockholders protective committee for the Great Eastern Natural Gas stockholders. Then he told me no, he didn't own any Trinidad stock or notes, and wanted to know why I asked him that; and I told him that there had been a group of stockholders that had never had the right to exchange their stock for the Trinidad Petroleum stock and notes that had formed a committee, and I represented a committee. The purpose of the committee was to see that those stockholders who had not had the opportunity to exchange their Great Eastern Natural Gas stock did get that opportunity. I asked him then if he hadn't received some literature back several years previously about the exchange. He said, yes,

(Testimony of Willard Eugene Warren.)

he remembered something about that, but that he just figured it was one of those kind of things that they wanted more money out of, and he didn't answer it for that reason, or he didn't pay any attention to it. And I told him, well, I asked him if he knew that the stock had considerable value at that time, and he said no he didn't know that. "How much was it worth?" I told him the stock was worth [921] about five or six dollars a share and the notes were worth about five or six dollars a share.

Q. By Mr. Lucas: What stock were you speaking of?

Mr. Rose: Just a minute.

The Witness: Trinidad International Petroleum.

Mr. Rose: Your Honor, there ought to be an end to this constant suggestion here. We are meeting some conversations that we obviously are not present, and counsel suggests was there anything said about this. I think he ought to stop leading the witness.

The Court: That was a pretty fair question. He asked him what stock was he speaking of.

Mr. Rose: He seems to have an amazing memory about conversations, and I thought he would tell us——

The Court: If you are objecting to the witness' memory, that is one thing; but if you are objecting to the form of the question that Mr. Lucas asked, I think that form is very correct.

(Testimony of Willard Eugene Warren.)

Mr. Rose: I am sorry.

The Witness: We were talking about the Trinidad International Petroleum stock and notes. I asked him how many shares of stock he had in the Great Eastern Natural Gas Company, and he told me he had 2700 shares—I think he told me at that time he had a lesser amount, around 2600 shares of stock in the Great Eastern Natural Gas Company, and he asked me what procedure we were going [922] through, and I told him, “Well, if you would like to exchange your stock and you signify your interest by giving me ten cents a share deposit on your stock, I will go ahead and list your claim with the Wake Development Company in California, and see that some action is taken on the matter, then you may get a right to subscribe on the old original basis, which was \$3.00 payment in cash and a credit of \$2.00 for every share of your Great Eastern Natural Gas stock.”

So he said, “Well, let me look that up and see what it amounts to, I want to make sure about it.”

And he looked it up and he found he had 2750 shares of stock. So he made out a check to the man who I said was chairman of the committee, A. R. Winslow, made out a check for \$275.00 and gave me the check, and then I told him that he was to write a letter off right away to Los Angeles. I suggested the form of letter that he write, telling him that he demanded his right, and I told him we would also intercede in his behalf and see what we could do, too, to supplement his request. Then I told him



(Testimony of Willard Eugene Warren.)

I would communicate with him later, and I left him at that time, and I returned to Philadelphia from Cadiz, Ohio. I communicated the information to Los Angeles, to Wake Development Company, told them that I had a chance of making a good sized sale of the stock, of the Trinidad stock and notes, and exchange it for the Great Eastern Gas stock that Mr. McCoy had. [923]

Mr. Rose: I move that be stricken on the ground it is not the best evidence, and is a conclusion and opinion of the witness.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Allowed.

The Witness: I told them to advise me as soon as they received any word. I later received word that a letter from the Wake Development Company, in which they gave——

Mr. Rose: Just a second. I object to that on the ground it is a conclusion of the witness and not the best evidence.

The Court: Do you have the letter now?

The Witness: No, I don't have the letter in my possession. I did have, but a lot of letters have gone astray, and I just don't have them all.

The Court: Do you have the letter, Mr. Lucas?

Mr. Lucas: No. I checked with Mr. Mainland and we do not have it, your Honor.

The Court: Continue.

The Witness: I received a copy of the letter that he wrote in to the Wake Development Company, and

(Testimony of Willard Eugene Warren.)

a copy of the letter which they replied back to him. Later I was instrumental in sending down to Mr. McCoy another salesman by the name of O'Brien, who I knew in Philadelphia, and O'Brien and I decided that he would go down—— [924]

Mr. Rose: Just a moment. I object to that as hearsay and a conclusion of the witness.

The Court: I think he better confine himself to the fact.

Mr. Lucas: We feel it is a part of the scheme, your Honor, that is set forth in the indictment. It is covered, we feel, sufficiently, by the allegations of the indictment.

Mr. Rose: Your Honor, I know what counsel has in his mind, and I have heard it frequently. The point is that I take the position that these conversations are incompetent even coming from the witness that we have a right to cross-examine, but I don't know any authority on the subject of evidence that has ever contended that this man, who knows somebody in Philadelphia named O'Brien can relate a conversation he had with O'Brien.

The Court: Well, he sent O'Brien down, he said.

Mr. Lucas: That is as far as the witness went.

The Witness: I then called Mr. McCoy on the telephone from Philadelphia and I told him I was sending—I told Mr. McCoy——

Mr. Rose: Just a second. This is a subsequent conversation, manifestly. I will have to interpose my objection, your Honor, to this conversation that the witness is about to relate on the ground that no

(Testimony of Willard Eugene Warren.)

proper foundation has been laid, it is hearsay, it is incompetent and not binding on the defendants.

The Court: What was McCoy's recollection of all this?

Mr. Lucas: He has testified as to the second man coming there and all of that. It all came out from Mr. McCoy, and this is merely corroboration of the evidence of McCoy.

The Court: Continue.

The Witness: I told Mr. McCoy——

Mr. Rose: Your Honor has overruled the objection?

The Court: Yes.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Witness: I told Mr. McCoy over the telephone that I was sending a Mr. Dawson down to see him, who was also connected with the deal; and I told him that Mr. Dawson had full powers to act, and that I couldn't return right then, but to be guided according to Mr. Dawson's instructions.

Q. By Mr. Lucas: Was the deal completed between the Wake Development Company and McCoy?

A. There was a deal completed. There was a 700 share sale of stock made as a result of Mr. Dawson's call.

Mr. Rose: Just a minute. I move that that be stricken as a conclusion and opinion of the witness.

(Testimony of Willard Eugene Warren.)

The Court: It may stand.

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. By Mr. Lucas: How much money did that 700 share [926] deal involve?

Mr. Rose: I object to that as calling for a conclusion of the witness.

The Court: Answer.

The Witness: As near as I can remember it called for a difference between the deposit of \$275.00 and \$2100.00.

Q. By Mr. Lucas: Did you sell Mr. McCoy any more stock?

A. Yes, we did sell him some more, but I don't believe it was paid for; so, therefore, I don't know whether you would call that a transaction.

Q. Detail the transaction for us, will you?

A. Well, there was another amount of \$2100.00 worth of stock in addition to the first 700 shares, another 700 shares at \$3.00. I instructed Mr. Danziger to send to his bank draft attached for \$2100.00.

Q. Send to whose bank?

A. Mr. McCoy's bank, the bank he instructed it to be sent to. I was later advised by Mr. Danziger that he did not——

Mr. Rose: Just a minute. I move that be stricken as a conclusion, not the best evidence and no proper foundation laid.

The Court: Denied.

Mr. Rose: May an exception be noted? [927]

The Court: Allowed.



(Testimony of Willard Eugene Warren.)

The Witness: I was later advised the draft was not honored. I called Mr. McCoy at the time the draft was supposed to be at his bank, and he told me that he was making arrangements to try to pay the draft. And later I called him again after the draft went back, and he said that Mr. Dawson had promised him to have the funds there from the sale of the other 700 shares in order to lift that draft and when the funds did not develop from Mr. Dawson he was not able to pay that draft.

Q. By Mr. Lucas: Did you have any other conversations with Mr. McCoy after that?

A. I don't remember.

The Court: Afternoon recess.

(Whereupon a short recess was taken.)

Mr. Lucas: Now, Mr. Clerk, may I have Exhibits, 90, 91, 95 and 96, which are in for identification?

Q. By Mr. Lucas: I show you, Mr. Carter, what has heretofore been offered in evidence as the Government's Exhibit 96, for identification——

Mr. Rose: Just a minute. You say it was offered in evidence. You offered it for identification.

Mr. Lucas: For identification. I am sorry if I misspoke myself, Mr. Rose.

Q. By Mr. Lucas: ——and I will ask you if you have ever seen the document before? [928]

A. I have.

Q. And when did you first see it, to the best of your recollection?

(Testimony of Willard Eugene Warren.)

A. To the best of my recollection it was in the latter part of June, 1944.

Q. From whom did you receive it?

A. Mr. Danziger.

Q. Do you recall where you were when you received it?

A. That was mailed to my mother's address.

Mr. Rose: Just a moment.

The Witness: That was mailed to my mother's address.

Mr. Rose: I move that be stricken as a conclusion of the witness and not the best evidence.

The Court: Denied.

Mr. Rose: May an exception be allowed?

The Court: Exception.

Mr. Lucas: I offer this in evidence now as Government's Exhibit 96.

The Court: Admitted.

(The document referred to was marked as Government's Exhibit No. 96, and was received in evidence.)

Q. By Mr. Lucas: I show Government's Exhibit 95 for identification, and call your attention to the handwriting in pencil on the side of the letter and ask you if you can recognize the handwriting?

A. This is J. M. Danziger's handwriting. [929]

Q. Very well. Now, addressing your attention to the first page there on which the handwriting is, I will ask you if you have seen the entire document before as it now is.      A. Yes.

(Testimony of Willard Eugene Warren.)

Q. From whom did you receive that?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness.

The Witness: Mr. Danziger.

The Court: The objection is overruled. Now you may repeat the answer.

The Witness: Mr. Danziger.

Q. By Mr. Lucas: Still addressing your attention, Mr. Carter, to the remainder of Exhibit 95, there are two remaining separate sheets of paper from which a part, apparently the address, of each name has been removed. I will ask you, first, if you know who removed that part that has been removed from each letter.

A. Yes, I cut this out.

Q. Now, directing your attention to the two sheets from which you have cut out something, did you receive them through the mail?

A. Yes, I did.

Q. From whom did you receive it?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness, no proper foundation laid. [930]

The Court: Overruled.

The Witness: Mr. Danziger.

Mr. Lucas: I now offer what has heretofore been offered for identification, in evidence, to carry the number 95.

Mr. Rose: Just a second, counsel. I find there is an envelope attached to that exhibit. Are you offering that also?

(Testimony of Willard Eugene Warren.)

Mr. Lucas: I offer the envelope, yes.

Mr. Rose: How about getting a foundation about the envelope? The addressee appears to have been obliterated.

Q. By Mr. Lucas: I call your attention to the envelope which is attached to the exhibit, and call your attention to the fact that the address has been torn out, at least the greater portion thereof, only one or two letters remaining, and ask you if you can tell me whether or not you know anything about the tearing out of the address on the envelope?

Mr. Rose: Find out what is supposed to have been in there.

The Witness: I can't tell what the address was; but this is the envelope it was received in.

Mr. Rose: He has got an unintelligible answer. What was received in it?

The Witness: The contents, the exhibits here.

Mr. Rose: Very well. [931]

Mr. Lucas: I am not through with it yet, please.

The Witness: May I look at that again?

This envelope was received at 178 Willis Avenue, New York City, addressed to Mrs. Hattie Warren.

Mr. Rose: I move that be stricken, your Honor, as not responsive to any question, and a conclusion of the witness.

The Court: Denied.

Mr. Lucas: I now offer the entire document in evidence, including the envelope, and ask that it



(Testimony of Willard Eugene Warren.)

carry the number in evidence which it now has for identification.

Mr. Rose: To which objection is had upon the following grounds, severally, and respectively: One, that there is no proper foundation laid. Now, the foundation laid for its offer is that the contents which are now stapled to said envelope were the contents received in that envelope. The envelope has an obliterated address without any indication of the addressee of said envelope. The envelope on its face shows it was dated December 5, the top letter that your Honor is examining, the first one, is dated Tuesday the 6th, without any year, and the court takes judicial notice of the fact that there was no such thing as Tuesday the 6th of December in that year, and necessarily such communication couldn't possibly be enclosed in an envelope mailed the day previously; and the other two copies, with the obliterated addressees are not related [932] dates and, therefore, they are, for the reasons stated here, incompetent and inadmissible.

Mr. Lucas: I would like to be heard, if the court please.

I would have to have the exhibit before I can speak, your Honor.

(The exhibit was handed to Mr. Lucas.)

Mr. Lucas: First, with respect to the document "Tuesday the 6th," I call your Honor's attention to the fact that counsel omitted to call your Honor's attention to the fact that, namely, there is not only no year mentioned there, but there is no month,

(Testimony of Willard Eugene Warren.)

so it could be Tuesday the 6th, assuming that the writer thereof wrote it correctly as to the day of the week and the date of the month, and it could be any month preceding the month of December of any years. Second, that the second sheet is dated December 4th, 1939, the third sheet is November 4th, 1939, one month previously, the envelope which the witness identified as being addressed to his mother some place in New York bears a date December 5th, subsequent date to any date that is on the previous pages for the month of December, and therefore very logically the envelope could have contained, as stated by the witness, the enclosures.

Therefore, this exhibit could have logically and clearly have been received by him and could have contained the contents thereof. [933]

Mr. Rose: I don't want to take up the time of your Honor arguing suppositions and so forth. There has been no testimony whatever on the part of this witness about these two subjects here with the obliterated address. The purported addressees of these two letters of November 4, 1939, and December 4, 1939, are persons concerning whom not a word has been uttered by this witness. That is why I had in mind, in addition to the other objections, the grounds therefor, that they are immaterial in addition to the other objections and no foundation has been laid.

The point is that we have a typewritten thing that may well have been typed onto the penciled memorandum, with no relationship to any particu-

(Testimony of Willard Eugene Warren.)

lar transaction, and there is no year or identity as to where this thing was allegedly typed, nor by whom. As I pointed out to your Honor, we can speculate and resort to conjecture to an unlimited degree, but there are no foundational facts here to tie in this Tuesday the 6th thing with anything, and the witness now has testified that for some reason he received it in an envelope, obliterated, on a date. If he says it may have been any year, of course it may have similarly—it may be something that has been copied by this witness or some confederate of his or anything else.

The Court: What count does this refer to?

Mr. Lucas: This refers to no particular count, but I do want to point out to the court, perhaps we have all [934] overlooked it, and I should have called it to the attention of the court sooner, that the first sheet of this, to-wit, that bearing the legend “Tuesday the 6th” was identified by the expert as having been written on the same typewriter as this here, Exhibit 96, and the witness said of both of these, that they were typed on the same typewriter, and, further, that they were typed on the same typewriter as that used in Exhibit 70 and 85, the same being letters——

The Court: That is enough talk about this. The exhibit is admitted.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

The Clerk: 95 for identification is in evidence.

(The document referred to was marked as

(Testimony of Willard Eugene Warren.)

Government's Exhibit No. 95, and was received in evidence.)

Mr. Lucas: If the court will indulge me, I have a post office inspector here, and I would like to excuse this witness and ask Mr. Webster to take the stand for a moment.

(Witness temporarily withdrawn.)

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C. E. WEBSTER,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record.

The Witness: C. E. Webster.

Direct Examination

By Mr. Lucas:

Q. What is your business or occupation, Mr. Webster?           A. Post Office inspector.

Q. How long have you been such?

A. 41 years.

Mr. Rose: Don't take up any time. We will stipulate he is qualified to testify to postal rules and regulations and practices, without any additional foundation.

Mr. Lucas: Thank you for that stipulation, and I will accept it.

Q. By Mr. Lucas: I asked you or caused you



(Testimony of C.E. Webster.)

to be asked to bring a sample of a United States Postal Money Order. Have you brought such?

A. I have.

Mr. Lucas: I ask that this be marked for identification——

The Witness: Pardon me. I have withdrawn that from the records of the post master at Los Angeles for this particular purpose, and I am not permitted to leave it.

Q. By Mr. Lucas: Mr. Webster, can you tell me whether or not when a Post Office Money Order is bought by anyone at the Post Office and sent to a person, whether or not that which is given to the person buying the Post Office Money Order shows or has on it that part of the Post Office [936] Money Order or coupon showing the name of the person buying the money order? A. It does.

Q. Will you pick that up and illustrate your remarks to the court there, showing that part which is retained by the issuing office, that which is given to the purchaser, and that which is retained by the final office that pays?

A. A blank money order consists of four portions, numbered 1 to 4. Beginning on the left-hand edge of this document, the first portion is marked stub, and is withdrawn and retained by the issuing post master; the second and third portions are handed to the purchaser, and on the third portion is a place under the name of "Remitter" where the name of the remitter and the address is found; the fourth portion is the receipt given to the pur-

(Testimony of C.E. Webster.)

chaser of the money order and is to be retained by them.

Mr. Lucas: Does that clarify that situation, your Honor?

The Court: Well, your photostats don't include part 3.

Mr. Lucas: No.

Q. By Mr. Lucas: When that Post Office Money Order is cashed, is there anything done with that?

A. Yes, sir; the third portion of this order is withheld by the paying postmaster as his office record showing payment of the order; the second portion is sent by [937] that paying postmaster to the central accounting office in Washington in support of his claim for reimbursement.

Q. The separation is made at the point here where it says "Paying postmaster detach coupon on this line?"

A. That is true.

Mr. Lucas: Any questions, Mr. Rose?

Mr. Rose: No, I think this man knows what he is talking about.

Mr. Lucas: You may step down, Mr. Webster, and thank you for coming.

(Witness excused.)

Mr. Lucas: Now, will you resume the stand, Mr. Carter?

WILLARD EUGENE WARREN

(WARREN C. CARTER),

resumed the stand as a witness on behalf of the government and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. I show you, Mr. Carter, Government's Exhibit 91, for identification, and ask you if you recognize the signatures thereon, and particularly the signature of Faulkner, Faulkner, Faulkner, Danziger, Faulkner, Faulkner, and Faulkner, as being the signatures of the persons.

Mr. Rose: I submit it calls for a conclusion and opinion of the witness, no foundation laid. This is an attempt to qualify this witness, in addition to his other [938] talents, as a handwriting expert.

The Court: Who received these letters?

Mr. Lucas: I will check with Mr. Mainland.

The Court: Who are these letters addressed to?

Mr. Lucas I will withdraw the exhibit, if the court please, temporarily at least.

Q. By Mr. Lucas: I show you Government's Exhibit 71 and ask you to look at that part of the exhibit, being a letter on plain stationery, the top of which says "Charles E. Mills, Wilmington, Delaware, Wake Development Company, Los Angeles, California;" I call your attention to the handwriting on the second sheet of that letter, and over on

(Testimony of Willard Eugene Warren.)

the reverse side of that second sheet, and ask you if that isn't the handwriting of Mr. Danziger?

Mr. Rose: I don't understand this at all, counsel. Apparently you are not satisfied with an unqualified stipulation. You asked me here yesterday whether I would stipulate wherever the handwriting of Danziger appears in any of these exhibits that have been received in evidence, that it is his handwriting. Now, there were no ifs, buts, or qualifications attached to it. Now, I certainly think that I can take issue with you that this witness can identify the handwriting according to the rules of evidence, but I don't know why you take the time to qualify him as a handwriting expert, when you have my unqualified stipulation [939] and these things are in evidence, and I haven't attempted to withdraw my stipulation.

Is there any question, your Honor, that I have stipulated that any writing that bears the signature of Danziger or purported signature in any of these exhibits is, in fact, his handwriting?

Mr. Lucas: The part I directed the attention of this witness to, Mr. Rose, did not happen to be a signature, but handwriting. However, I will take full opportunity of your offer and ask you to look at this handwriting to which I directed the attention of the witness and ask if that is Mr. Danziger's handwriting.

Mr. Rose: I told you at the very beginning if there is any question of any handwriting here you won't have to qualify any expert. It is.



(Testimony of Willard Eugene Warren.)

The Court: Mr. Rose says it is.

Mr. Lucas: I will accept that, then.

Q. By Mr. Lucas: Showing you a still further portion of Exhibit 71, I direct your attention to another piece of stationery, the top of which is "Wilmington, Delaware, November 15th" '37, and direct your attention to three words in pencil at the top of that, "For your file," and ask you if that is your handwriting? A. It is.

Q. When did you first receive that letter?

A. I received this letter during 1937 while making arrangements for the sale of Trinidad International Petroleum [940] stock with a Mr. Mills in Wilmington, Delaware. The letter was sent to me by Mr. Danziger to show me what Mr. Mills had written to him. And I later sent it back to him along with other letters; made a notation on this letter "For your file."

Mr. Rose: I move it be stricken on the ground it is a conclusion and opinion of the witness, no proper foundation laid.

The Court: Motion is denied.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

Mr. Rose: May I add to that objection, your Honor, that the same is remote and immaterial, being an item of November 15th, 1937, and it doesn't pertain to any issuable fact in this proceeding.

The Court: What is its relevancy, Mr. Lucas?

Mr. Lucas: The relevancy is to show the scheme and device and the conspiracy, and the exchange

(Testimony of Willard Eugene Warren.)  
of correspondence between Mr. Danziger and Mr. Carter in exchanging communications from the persons to be defrauded, and the exchange back and forth when Mr. Danziger received a letter such as this from this man he sent it to Mr. Carter, Mr. Carter read it, digested its contents and sent it back; or in those instances, as shown by the evidence, where he didn't receive the original document, he received typed copies.

The Court: Objection is overruled. [941]

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

Q. By Mr. Lucas: Was this arrangement between you and Mr. Danziger and the Wake Development Company with respect to exchanging correspondence containing the original letters from persons or copies thereof ever changed from the beginning until your operations ceased?

Mr. Rose: I object to it as leading and suggestive, calling for a conclusion and opinion of the witness, no proper foundational facts being present.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Allowed.

The Witness: It was in continuous operation until I ceased selling the stock or working on the deal.

Mr. Lucas: Will your Honor pardon me just a moment? I am just about cleaning up with this witness, and I don't want to overlook anything.

The Court: I won't ask you to begin your cross-

(Testimony of Willard Eugene Warren.)

examination until tomorrow, if that is more convenient for you, Mr. Rose, regardless of when he finishes. Should he finish in a few minutes, I won't ask you to begin your cross-examination until tomorrow, if that is more convenient to you.

Mr. Rose: Frankly, it might expedite matters, your Honor, because your Honor observes I work extemporaneously, [942] and I might, if I have a little time, to mull over this thing, be able to cut this examination extensively.

Q. By Mr. Lucas: Mr. Carter, I show you Government's Exhibit 68, in evidence, and direct your attention to a part of the exhibit bearing at the top the legend "O. T.—We have not answered this—please instruct," and ask you if you have seen the letter before?           A. Yes, I have.

Q. From whom did you receive the letter?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness, not the best evidence, and no proper foundation laid.

The Court: He may answer.

The Witness: Mr. Danziger.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

Q. By Mr. Lucas: I call your attention now to——

Mr. Rose: What is the date of that letter?

Mr. Lucas: The letter itself has no date that I can see on it; it bears this, it starts out with, "On July——

(Testimony of Willard Eugene Warren.)

Mr. Rose: What is the date? If it has no date, then I have the answer.

Mr. Lucas: It has no date.

Mr. Rose: Well, that settles it.

Mr. Lucas: I merely thought you were looking for information. [943]

Mr. Rose: I was. I wanted to know if it had a date on it.

Q. By Mr. Lucas: Still calling your attention to that part of the exhibit, you find in the lower left-hand corner of this letter in a circle in pen and ink the words, "Over" and then the initials "O. T.;" in whose handwriting is that?

A. That's mine.

Q. All right. On the back we find the following legend, "Answer this fellow same as you did the Lima, Ohio, fellow, brief and short and curt. O. T." In whose handwriting is that?

A. That is in mine.

Q. Below the initials "O. T." we have the further legend "Continue mail c/o Thomas Kane, Phil.;" in whose handwriting is that?

A. That is in mine.

Q. I will ask you after you had placed these various inscriptions or writings on the letter, what did you do with it?

Mr. Rose: I presume since the record evidence shows from Mr. Mainland, that this file was handed to him by Mr. Danziger, that it was received here in Los Angeles. Or do you think you ought to prove that?



(Testimony of Willard Eugene Warren.)

Mr. Lucas: I would rather have the answer of of the witness, Mr. Rose. [944]

Mr. Rose: All right.

The Witness: I returned this to Mr. Danziger and the Wake Development Company at Los Angeles.

Q. By Mr. Lucas: I show you, after having first shown to counsel——

Mr. Rose: Is there anything here that hasn't got something removed from it?

Q. By Mr. Lucas: ——a portion of a yellow second-sheet, the top legible word is "Philadelphia, Pa." and below that the words "no date," and below that "Trinidad International Pet.;" and ask you if you have ever seen that before.

A. Yes, I have seen this before.

Q. And how did you receive it, and when?

A. This is one of the yellow second-sheets I received from Mr. Danziger.

Q. Do you recall approximately when you received it?

Mr. Rose: Wait a minute. I move that answer be stricken as a conclusion of the witness.

The Court: Denied.

Mr. Rose: May an exception be noted?

The Court: Allowed.

Q. By Mr. Lucas: On the reverse side of the paper I have just shown you there are some figures and handwriting; is any part of that in your handwriting?

A. Yes, it looks like all of it is mine, figuring.

(Testimony of Willard Eugene Warren.)

Q. And this document which I have shown you has the type name at the bottom "Lehman Kuhl, Box 102, Station A, Flushing, New York"; I will ask you if that is the same—did you call on that man?

A. My recollection is I had—yes, my recollection is I did call on him, but not right away after receiving this.

Q. Can you tell me if the name Lehman Kuhl, Box 102, Station A, Flushing, New York, is the same Lehman Kuhl mentioned in Government's Exhibit 68?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness, no proper foundation laid.

The Court: What are those two documents, Mr. Lucas?

Mr. Lucas: Exhibit 68 is already in evidence. It is the correspondence between this man Lehman Kuhl and Wake Development; and this, as the witness has already said, was a typed copy of a letter that Wake received from Mr. Lehman Kuhl and typed and sent to this witness.

Mr. Rose: That is what you just told us.

Mr. Lucas: Pardon me; that is what the witness just told us.

Mr. Rose: I heard the witness' testimony.

Mr. Lucas: The confusion arises, your Honor, because we have here B. J. L-e-h-m-k-u-h-l, one word, Box 102, Station A, Flushing, New York, and in that typed copy it seems to be two words, Lehman

(Testimony of Willard Eugene Warren.)

Kuhl. I ask that the carbon [946] copy be marked as the government's exhibit next in order.

The Court: Let the documents speak for themselves.

Mr. Lucas: I have not heretofore offered it. I now offer it.

The Court: It may be marked.

Mr. Rose: I call your Honor's attention to this: counsel has characterized this as a second-sheet. It obviously is nothing of the kind; it is an original typewritten memorandum made by some man named Kuhl, so far as we know, and it has no date, and——

The Court: Is Kuhl named in one of the counts?

Mr. Lucas: I want to make a further observation, your Honor.

The Court: Is he named in one of the counts?

Mr. Lucas: No; he is named as one of the parties to be defrauded, I think. Mr. Mainland——

Mr. Rose: Let me point out—let me finish my objection.

Mr. Lucas: I am sorry, Mr. Rose.

Mr. Rose: If his Honor overrules it he always allows me an exception, so I would like to at least be able to present my views. I want to call your Honor's attention—I do not mean to indicate that your Honor is not probably catching this a lot faster than I do, but I want to call your Honor's attention to why I have been objecting to this form of leading and suggestive inquiries and the words placed in the mouth of the witness by inquiring

(Testimony of Willard Eugene Warren.)

counsel. Now the undisputed evidence in this case at this time overwhelmingly established here is that Mr. Danziger was in New York City and was transacting business at that time in New York City. Now, he says, "from whom did you receive this?" and he is referring to this yellow sheet of paper. And this witness says he received it from Mr. Danziger, without telling us where or how, whether it was through the mail or anything at all. And that is the type of ghosts we have been running into here. Now, it is obvious that Mr. Danziger didn't write this thing here. When your Honor examines the other papers you will see that an inquiry has gone forward to the Wake Development Company in Los Angeles, and this is evidence. That is what I have been so persistent upon, your Honor, is this constant effort on the part of counsel to suggest to him that he got that from Danziger, without giving us a word. There isn't anything before your Honor, except sheer surmise and speculation, with respect to this particular exhibit, and yet we have an unqualified assertion on the part of this witness that he received this thing here, this particular paper from Danziger.

I would like to hear your observation on that now before you get too much time to confer with the witness on the subject.

Mr. Lucas: There is no implication about that, is there? [948]

Mr. Rose: No, I am not attributing any bad motives to you.



(Testimony of Willard Eugene Warren.)

Mr. Lucas: Is there any implication in connection with that remark about conferring with the witness?

Mr. Rose: You have a right to confer. As a matter of fact, I would criticize you if you didn't.

Mr. Lucas: Now, if the court will bear with me just a moment. This letter that counsel offered to stipulate was received here in Los Angeles, and about which this witness is testifying, is a letter by Mr. Lehman Kuhl to the Trinidad. I avow that the document I just offered is a typewritten copy of this very letter here. That is the purpose of the offer, to show, as the witness states, that he received this original, made his notations and mailed it back, and in due course of time received a typed copy for his files. If your Honor——

The Court: It is admitted. [949]

Mr. Lucas: ——will examine it and find it different than I have stated, I will withdraw the offer.

The Court: It is admitted.

The Clerk: Is this part of 68?

Mr. Lucas: No. Give it a new number. Let it have its own distinction.

The Clerk: 107 in evidence.

(The document referred to was marked as Government's Exhibit 107, and was received in evidence.)

Mr. Lucas: Let the record show that I am showing counsel four or five sheets of paper before examining the witness about them.

(Testimony of Willard Eugene Warren.)

Mr. Rose: It seems to me that either this or one similar to it is already in evidence.

Mr. Lucas: I think you are right, Mr. Rose.

Mr. Rose: I don't quite get it. Go ahead, show it to him, and let's see if we can make a little headway. I may be in error, but my impression is that you have got one of those letters already in evidence. Haven't you, Mr. Mainland?

Mr. Lucas: I am rather inclined to think that we have.

You having examined the documents, Mr. Rose, I will ask you if your stipulation which you have entered into concerning the signature applies to the letter which I now hand you under date of July 12, 1937?

Mr. Rose: Yes. [950]

Mr. Lucas: I offer this in evidence as the government's exhibit next in order.

The Court: Admitted.

The Clerk: 108.

(The document referred to was marked as Government's Exhibit 108, and was received in evidence.)

Mr. Lucas: I now show you a letter you previously examined, on the letterhead of Oil Royalties Investment Trust, and ask you if our stipulation will extend to and include the initials at the bottom of that letter as being the initials of Mr. Danziger?

Mr. Rose: Yes.

Mr. Lucas: I offer this as the government's exhibit next in order.

(Testimony of Willard Eugene Warren.)

Mr. Rose: I am going to object to that. Let's find out when it was sent. I don't even know the year.

Mr. Lucas: I will withdraw that offer temporarily.

Mr. Rose: Let's find out if this man is supposed to have received that; and if he has, when?

Q. By Mr. Lucas: I show you, Mr. Carter, after having shown it to counsel, a letter on the letterhead of Oil Royalties Investment Trust, Ltd., bearing the legend "Dec. 18" and signed with the initials "JMD", which counsel has stipulated is Mr. Danziger's handwriting, and ask you if you can tell us whether or not you have seen that letter [951] before? A. Yes, I have.

Q. Are you the person to whom it is addressed?

A. Yes.

Q. And can you tell us approximately when you received it?

A. It is my opinion that it was in 1938.

Q. That is your best recollection?

A. That is.

Mr. Lucas: I offer that as the government's exhibit next in order.

Mr. Rose: I object to it on the ground that there is no proper foundation laid, the same is remote, doesn't pertain or relate to any transaction in which there is any issuable fact in this trial.

Mr. Lucas: May I make this observation? I believe the letterhead "Oil Royalties Investment Trust" is referred to in the sworn testimony of Mr.

(Testimony of Willard Eugene Warren.)

Danziger that has been read into the evidence, your Honor.

Mr. Rose: It involved an entirely different transaction with some British syndicate, and so forth.

Just because you asked somebody something when there is nobody there to object, it doesn't open the channel, according to my views of evidence, to all collateral transactions.

Do you want me to go into the subject of that deal that [952] was pending at that time? I would be glad to.

My point, your Honor, is that it is merely a very minor communication involving a program, a proposed program that has nothing to do with this transaction at all. My point is if we go into that thing at all, your Honor, I would have to show that there was a proposal at that time to set up a syndicate with British interests and so forth.

It has nothing to do with this other matter at all.

The Court: It is admitted.

Mr. Rose: May an exception be noted?

The Court: Exception is allowed.

The Clerk: 109.

(The document referred to was marked as Government's Exhibit 109, and was received in evidence.)

Q. By Mr. Lucas: I show you a letter on the letterhead of Park Lane Hotel, Picadilly, London, addressed to "My Dear Old Timer"; is that addressed to you?



(Testimony of Willard Eugene Warren.)

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness.

Q. By Mr. Lucas: Just answer the question, please, Mr. Carter.

Mr. Rose: Is there a ruling on that, your Honor?

The Court: He may answer.

Mr. Rose: May I have an exception?

The Court: Exception.

A. This is addressed to me. [953]

Q. By Mr. Lucas: Did Mr. Danziger in his correspondence with you address you as "Old Timer"?

Mr. Rose: I object to that on the ground that the correspondence is the best evidence. It calls for a conclusion of the witness.

The Court: He may answer.

Mr. Rose: May I have an exception noted?

The Court: Exception.

A. He did.

Q. By Mr. Lucas: Are the initials "OT" an abbreviation for "Old Timer" that is used between you and Mr. Danziger in correspondence?

Mr. Rose: I object to that as leading and suggestive, calling for a conclusion and opinion of the witness.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception.

Q. By Mr. Lucas: Will you answer the question, Mr. Carter?

(Testimony of Willard Eugene Warren.)

A. Yes, it refers to "OT", Old Timer does. Is that the question?

Mr. Lucas: Will you repeat the questions, please, Mr. Reporter?

(The following question was read: "Are the initials 'OT' an abbreviation for 'Old Timer' that is used between you and Mr. Danziger in correspondence?") [954]

The Witness: Yes, it is.

Q. By Mr. Lucas: Referring to the letter I have just handed you, from whom did you receive that letter?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness.

The Court: Overruled.

A. I received this letter from Alda Faulkner, along with a letter of explanation as to its source, advising me that this was a copy of a letter which Mr. Danziger had sent me to a Philadelphia address.

Q. And you had received the Philadelphia letter, too, had you not?

A. Yes, I did. And there was another sheet along with this, a pink sheet, along with this letter, with some notations from Alda Faulkner.

Mr. Lucas: I think the witness is confused——

The Court: Are you now testifying, counsel? You remember you have been sworn?

Mr. Lucas: Yes, I recall that very distinctly, Mr. Rose.

I ask that this "Old Timer" letter be made a part of Exhibit 105, because it has therein the dup-

(Testimony of Willard Eugene Warren.)

licate one which was sent to Philadelphia, and the other sent to some other address, both of which were received by the witness as testified to as intended by the sender of the letter.

The Court: That may be done. [955]

The Clerk: It is part of 105.

(The documents referred to were received in evidence and made a part of Government's Exhibit 105, in evidence.)

Mr. Lucas: Now, I show you, counsel, some papers.

Mr. Rose: Let me see those last exhibits, please?

(Exhibits were handed to Mr. Rose.)

Mr. Rose: I want to correct the record while we are at this point. Your Honor, the defendant Danziger just called my attention to Exhibit 108, and he states to me that the written signature that purports to be affixed to this communication is not his handwriting. I just held it up at a distance with some other papers——

The Court: You want to withdraw your stipulation?

Mr. Rose: I want to withdraw my stipulation as to that, because he called my attention to that himself.

The Court: It may be done.

Mr. Rose: Very well.

Mr. Lucas: Then may I ask leave of the Court to withdraw the exhibit in its entirety, to make up

(Testimony of Willard Eugene Warren.)  
my mind with respect to expert testimony on it,  
or to re-offer it for some other reason?

The Court: Withdrawn.

Mr. Rose: Just a moment.

Mr. Lucas: I will withdraw the exhibit.

The Court: Withdrawn. [956]

Q. By Mr. Lucas: I show you, Mr. Carter, two sheets of paper attached to an envelope, the first sheet bears a cut out section there; can you tell me, first, whether you have seen these before?

A. Yes, I have.

Q. From whom did you receive them?

Mr. Rose: I object to that as calling for an opinion and conclusion of the witness, no proper foundation laid.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception.

A. These are copies of letters sent to me from Los Angeles.

Q. By Mr. Lucas: I direct your attention to the handwriting on the bottom of the first page which says, "Dear OT—Nothing else new. Regards. JMD"; do you know in whose handwriting that is?

A. To the best of my knowledge it is Mr. Danziger's.

Q. And the second sheet bears a signature, "A. Faulkner"; can you tell in whose handwriting that is?



(Testimony of Willard Eugene Warren.)

A. It looks like Mr. Danziger's handwriting to me.

Mr. Rose: I move that be stricken as a conclusion of the witness.

The Court: Stricken.

Mr. Lucas: I offer this in evidence as government's exhibit next in order. [957]

Mr. Rose: I object to it on the ground it is irrelevant and immaterial, no proper foundation laid, and incompetent.

The Court: Admitted.

Mr. Rose: May an exception be noted?

The Court: Exception.

The Clerk: No. 110.

(The document referred to was marked as Government's Exhibit 110, and was received in evidence.)

Mr. Lucas: May I have Exhibit 72 for a moment, Mr. Clerk?

The Court: You can finish up in the morning.

(Whereupon, at 4:30 o'clock p. m., Thursday, January 25, 1945, an adjournment was taken until Friday, January 26, 1945, at 10:00 o'clock a. m.) [958]

Los Angeles, California,

Friday, January 26, 1945, 10 a. m.

The Clerk: 15173, United States of America vs. Jacob Morris Danziger.

Mr. Lucas: Ready for the government.

WILLARD EUGENE WARREN

(WARREN C. CARTER)

resumed the stand as a witness on behalf of the government and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lucas:

Q. I show you, Mr. Carter, after having first shown to counsel, two sheets of paper stapled together, the first one a yellow second sheet under date of October 20, 1939, the second, a white second sheet under date of October 25, 1939; I ask you to examine them and tell me whether you have ever seen them before. A. Yes, I have.

Q. From whom did you receive them?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness, no proper foundation laid. I have in mind, your Honor, that if he received it in the mail that should be indicated. The inference here is—he has altered his modus operandi here from the inception of his testimony to subsequently by volunteering “Mr. Danziger”. At one time he was talking about Wake Develop-

(Testimony of Willard Eugene Warren.)  
ment Company. [960] Now, if he received that we ought to know, first, whether he received it in the mail or whether he received it from some individual; then I could submit an objection that would have some substance to it, because it will be clear what the objection is directed to. He keeps asking from whom did you receive it. If he got it in the mail, there is no way in the world of this man knowing who dropped it in the mail.

The Court: Did you get it in the mail?

The Witness: Yes, I did.

The Court: Now, your next question.

Q. By Mr. Lucas: Now, Mr. Carter, I direct your attention to the second sheet——

The Court: Your question is unanswered. He said he got it in the mail. Your question of from whom he received it is unanswered.

Mr. Lucas: Thank you, your Honor.

Q. By Mr. Lucas: From whom did you receive it, Mr. Carter?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness, no proper foundation laid.

The Court: He may answer.

Mr. Rose: May an exception be noted?

The Court: Exception allowed.

A. I received this from Mr. Danziger and the Wake Development Company.

Q. I direct your attention to the second sheet and [961] to the penciled notation at the top thereof

(Testimony of Willard Eugene Warren.)

in handwriting, there appears "OT Hope this OK JMD"; do you know in whose handwriting that is?

A. To the best of my knowledge that is Mr. Danziger's.

Q. Now, I direct your attention to the second sheet beneath the words "Harry R. Houston Esq.", there is a section of the page that is cut out, and I ask you if you know how that was removed and by whom?

A. I cut it out.

Mr. Lucas: We offer this in evidence, if the Court please, as Government's exhibit next in order.

The Court: Admitted.

The Clerk: 111.

(The document referred to was marked as Government's Exhibit 111, and was received in evidence.)

Q. By Mr. Lucas: Yesterday afternoon, Mr. Carter, I showed you Government's Exhibit 17, the first six photostatic copies of United States postal money orders, there being ten in the exhibit, and asked you to identify them and other questions; I now ask you from whom you received the money represented by those first six photostatic copies of United States money orders.

Mr. Rose: To which objection is had on the ground it has been answered at least three times.

The Court: Once.

Mr. Rose: It was answered once, yes, your Honor. [962]



(Testimony of Willard Eugene Warren.)

Mr. Lucas: It was stricken once, your Honor, and I wasn't clear.

The Court: Then he answered it. Then you went back to it.

Mr. Lucas: I wasn't clear on the subject, and I wanted to have it clarified in the record if there was any doubt.

Q. By Mr. Lucas: I show you, Mr. Carter——

Mr. Lucas: Are we going to wait for another answer, your Honor?

The Court: No.

The Witness: I didn't answer this.

Mr. Lucas: The Court said that you did, and I am satisfied that the Court's recollection is correct.

The Witness: I meant just then.

The Court: Five hundred thirty-odd dollars.

Mr. Lucas: Five hundred thirty even.

Q. By Mr. Lucas: Mr. Carter, I show you Government's Exhibit 72, in evidence, and direct your attention to a part of that exhibit on the letterhead of the law offices of Hering, Morris & James, Wilmington, Delaware; there is certain handwriting——

Mr. Rose: Has that been exhibited to me?

Mr. Lucas: It must have, or it wouldn't be in evidence, Mr. Rose.

Q. By Mr. Lucas: (Continuing) ——hand-writing as follows: "Since he has been so cute as to direct to you [963] personally I would answer him personally and let him know who and what your antecedents were for twenty years and also who the others are and use your own judgment

(Testimony of Willard Eugene Warren.)

J. M. Maybe I am a little impetuous and sore"; I will ask you to examine that handwriting and tell me whose handwriting it is, if you know.

A. This is my handwriting.

Q. By Mr. Lucas: Do you recall what you did with the letter after the handwriting was placed thereon?

A. I sent this to Mr. Danziger through the mail in care of the Wake Development Company in Los Angeles.

Mr. Lucas: You may cross examine, counsel.

#### Cross Examination

By Mr. Rose:

Q. You have indicated here, at the inception of your testimony, that your true name is Warren?

A. That is correct.

Q. Now, you were arraigned on the charges in this indictment in the department presided over by Judge Harrison, do you recall that?

A. I do.

Q. At that time you were asked by the Clerk whether your true name was Carter, and you responded that it was; is that correct?

A. Yes, with an explanation.

Q. That is what you said. You didn't give any [964] explanation to Judge Harrison or to the Clerk, did you, you merely said that was your true name?

A. I meant it was the name in the indictment.

Q. Wait a moment. Didn't you do that? Will you answer the question?

(Testimony of Willard Eugene Warren.)

A. Yes, with an explanation.

Mr. Lucas: I take it, your Honor, the witness wants to explain his "Yes" answer.

The Court: You just stay right there, and I will run this.

Q. By Mr. Rose: You were asked by opposing counsel here whether you were convicted in the State of Illinois, and you indicated that you had been, is that correct? A. That's right.

Q. You were tried, were you not, in that case under the name of William Carmen?

A. That's right.

Q. And the sentence was imposed on you under the name of William Carmen, is that correct?

A. Yes, with an explanation. I was tried under four names or more, besides William Carmen.

Q. Were you tried under your true name?

A. No, sir.

Q. You say you were born where?

A. Robinson, Illinois.

Q. When were you apprehended in this matter?

A. Which one do you mean?

Q. The proceedings that are now taking place in connection with these charges.

A. About October 20 in New York City, 1944.

Q. Was that a place of residence of yourself?

A. It is my mother's home.

Q. Prior to your apprehension on that date had you indicated to anyone your disposition to appear and face trial here? A. I did not.

Q. You have been represented in this proceed-

(Testimony of Willard Eugene Warren.)

ing by an attorney named Ames Peterson; when did you first meet him?

A. About a month after I was placed in the County Jail here in Los Angeles.

Q. Upon your being booked here, you engaged no counsel for a period of a month, is that it?

A. Somewhere near that.

Q. You entered a plea of guilty to one count here after you had first entered a plea of not guilty. Now, when had you first discussed the subject of entering a plea?

A. Oh, I think that was probably—probably a week or ten days after I had engaged counsel.

Q. I am not trying to pry into the subject of your relations with your counsel, but may I ask you whether you ever knew of Ames Peterson before he visited you in the jail? [966]

A. No, I did not.

Q. Did you have someone arrange with him to call on you? A. Yes, I did.

Q. Who was it?

A. Mr. Maxine Smith, another attorney.

Q. Where does he reside?

A. He is an attorney here in Los Angeles.

Q. Had he called on you first?

A. Yes, he had.

Q. In your preliminary discussions respecting the matter being represented by counsel, was the subject approached that it would be possible to arrange, if you would turn government's witness here, for elimination of most of the charges?



(Testimony of Willard Eugene Warren.)

A. Certainly not.

Q. You never knew that that was going to be the case, did you?      A. No, I didn't.

Q. It came as a sheer surprise to you?

A. No, it wasn't a surprise.

The Court: Mr. Rose, that was my action.

Mr. Rose: What was that?

The Court: What you are talking about.

Mr. Rose: Your Honor, I didn't know anything before.

The Court: You were here. [967]

Mr. Rose: I am not referring to that. I have in mind—I will explain my position.

The Court: You don't need to. I just wanted to remind you it has been a long trial and you might have forgotten. At the opening of the case the government wanted to try this case against Danziger and defer this trial on the charges of not guilty pleas, and I declined to permit that, and the government said, further, that at the end of the trial they expected to dismiss those counts as against the witness, and I said we would go to trial on all of the counts against both of the defendants now, and the United States Attorney then, after consultation with somebody at the counsel table, moved to dismiss presently—I mean at that time—the other counts.

That is a correct recital of what happened?

Mr. Lucas: That is my recollection.

Mr. Rose: That is precisely what happened, your Honor.

(Testimony of Willard Eugene Warren.)

The Court: That was solely my action, Mr. Rose.

Mr. Rose: Yes, your Honor. But what I had in mind was—I am trying to canvass the subject in a limited way, whether the prospects of that being accomplished was discussed with him before he came into court, that is what I had in mind.

The Court: I don't know how the word "prospects" could be applied to it, because what was done was solely my action; nobody had ever discussed it with me, and I had no idea when [968] I came in to begin the trial of the case that the government was going to take the position it did, that it might be allowed to go to trial against Mr. Danziger alone, and the decision I made was made at the moment.

Mr. Rose: Maybe I am a little confused myself, your Honor, about what I have in mind here. There isn't any question that what your Honor indicated is unequivocally what has happened. What I was getting at was, frankly, whether he discussed that he thought he could get the co-operation of the United States Attorney to move for a dismissal of all of the counts except one in the event he turned states evidence. That is what I was merely getting at, your Honor.

The Court: I will give you a very wide range of cross examination with this witness, Mr. Rose.

Mr. Rose: Thank you.

Q. By Mr. Rose: When you entered a plea of not guilty to these charges, you intended at that

(Testimony of Willard Eugene Warren.)

time, did you, to controvert the charges contained in the indictment?

A. Will you please explain what "controvert" means?

Q. Did you admit the charges contained in the indictment, or did you claim that they were not true when you entered a plea of not guilty?

A. I didn't make any statement.

Q. Well, did you intend to stand trial in the beginning when you entered a plea of not guilty?

A. To tell you the truth, I didn't know what I was going to do.

Q. Did a discussion come up that it would be to your best interests, since you are a fugitive from a judgment of imprisonment in Illinois, that you might as well get off as lightly as possible by taking a plea to one count?

A. No, it didn't occur to me that way.

Q. Well, was it discussed?

A. No, I had no one to discuss it with. I had no counsel.

Q. You had a counsel when you entered a plea of not guilty, didn't you?

A. No, I entered a plea of not guilty, I think, in the very beginning in Judge Harrison's court room, to the best of my recollection. I didn't have any counsel then. Maybe I might be a little bit confused about the proceeding; I was up a couple of times without counsel.

Q. Well, was the subject discussed that it would be to your advantage to enter a plea to one count

(Testimony of Willard Eugene Warren.)

and then perhaps the government's attorney might consider asking the Court to dismiss the other charges if you plead to one and turned states evidence?

A. No, it wasn't discussed. I don't know how it could be discussed, I had no one to discuss it with.

Q. You told me that you were first visited by an attorney here who recommended Mr. Ames Peterson. [970]

A. I had seven attorneys visit me.

Q. Without being requested to?

A. No. I was looking for an attorney.

Q. You were——

A. I wrote to the Bar Association to send me some attorneys. I had nobody to direct me. It was through a chain of circumstances, I finally eliminated and finally got an attorney who I thought I could depend on his advice.

Q. Were you informed that your attorney had formerly been connected with the United States Attorney's office?

A. No, I didn't know it when I hired him.

Q. Did you learn it at any time?

A. I learned it afterward. I heard it afterward, but my attorney didn't even tell me himself.

Q. Well, when you were informed that he had been connected with the United States Attorney's office you learned that before you decided to enter a plea to one count, isn't that correct?

A. No, I don't think so. I think I expressed the opinion to my attorney that I didn't see how



(Testimony of Willard Eugene Warren.)

in the world that I could possibly refute a lot of the allegations in the indictment that I had read, because I had received them prior to retaining my attorney, from another attorney who didn't wish to represent me because he said that he didn't think he could do me any good by representing me and fighting the case. [971]

Q. In any event, Mr. Peterson indicated that he possibly could get you off with the co-operation of the United States Attorney on one count?

A. If he had said that to me I wouldn't have retained him.

Q. You were indisposed to have your attorney assist in eliminating sixteen of these charges?

A. I didn't retain an attorney to do any bargaining, if that is what you mean. I wanted him to advise me what my legal status was, that's all, in his opinion.

Q. Well, were you informed—I haven't any business inquiring into any discussion had between you and your attorney, that is purely privileged under the rules, and I am not trying to pry into any discussion, and I want you to understand it, and I am not trying to find out what you and your attorney discussed; I am merely trying to get, as we might call it, an ultimate generalization of a particular subject. Were you informed before you entered a plea to one count that your attorney, Mr. Peterson, had taken up the matter with the United States Attorney?

(Testimony of Willard Eugene Warren.)

A. Absolutely not. As a matter of fact, I wrote——

Q. Just a moment. You have answered the question, Mr. Warren. Well, was the subject discussed that the United States Attorney would endeavor to dismiss the remainder of the counts?

A. It was not. [972]

Q. At any time?

A. No, sir. Mr. Peterson said very little.

Q. Just a minute, Mr. Warren. As I told you, I have no business finding out what conversations you had with your attorney, that is your own business. A. I will be very glad to tell you.

Q. Well, you entered a plea to one count only?

A. That's right.

Q. Now, were you informed what was going to happen to the other sixteen counts?

A. No, sir.

Q. That wasn't even mentioned?

A. Yes, I mentioned it.

Q. You asked what was going to happen to it?

A. Yes.

Q. What was said?

A. Well, it was left very vague to me, I didn't know.

Q. Well, didn't you insist on an answer that was definite? A. No, I didn't, because——

Q. Don't tell me why. You didn't, is that correct?

A. I didn't insist on anything. I just left them things go as they would.

(Testimony of Willard Eugene Warren.)

Q. It appears to me from my observation in the course of this trial during your testimony, that you brought on with you here from New York where you were apprehended a [973] number of documents. You have those in mind, have you?

A. What is your question?

Q. Any time you don't understand it, ask the reporter to read it to you. I am sure the court will——

A. I didn't hear a question.

Q. Very well.

Mr. Rose: Will you read it to him?

Mr. Peterson: I think, if you will pardon me, I can straighten that out for you. Mr. Rose, all of those documents were mailed to me from New York and came to my office.

Mr. Rose: I wish you hadn't told us that, Mr. Peterson. I know your intentions were of the best, and I think if an issue had arisen about this matter during the course of this form of the inquiry, as an officer of this court it would have been your duty to make that statement; but, frankly, I really wish you hadn't made it.

Mr. Peterson: I didn't mean to interrupt you, but that happens to be the fact.

Q. By Mr. Rose: Now, with the voluntary statement of your counsel here, you heard that, didn't you?

A. That's correct.

Q. Well, then, before you were apprehended you mailed out certain particular documents here to Mr. Peterson?

(Testimony of Willard Eugene Warren.)

A. Oh, no, no, I couldn't have done that, I didn't know Mr. Peterson before.

Q. Well, did you mail certain papers to him?

A. No, I did not.

Q. Did you instruct anyone to mail some papers to him?

A. No, I did not. I will explain it to you if you want me to.

Q. I will get at it, Mr. Warren, you would be surprised. Where were these particular papers with the cut out sections of the addresses at the time you were apprehended?

A. At my mother's home.

Q. Did you inform Mr. Peterson after he had visited you concerning these charges, that some steps should be taken to have those particular documents transmitted on to here? Yes or no.

A. Some time afterwards, yes.

Q. In other words—let me ask you this: Did you write back to your mother's home asking her to send the papers on here? A. Yes, I did.

Q. Did you instruct her what papers?

A. I told her to send everything—

Q. No. You told her to send everything?

A. That's right, everything she could find.

Q. All right. That was after a discussion with your counsel?

A. I suppose it was. I suppose I had talked to him about the case. I don't think I talked about the papers with my counsel, even at that time. I think that was my own [975] voluntary act, be-



(Testimony of Willard Eugene Warren.)

cause I wanted whatever I had in the case to be here.

Q. For the purpose of using them for yourself or against your co-defendants, which?

A. Well, I didn't know what purpose I was going to use them for. I thought I ought to have them here.

Q. For what purpose?

A. To look over, to show to my attorney.

Q. When, in relation to the receipt of these documents, without taking time to identify each particular one, was it you resorted to the practice of cutting out a section of the letter?

A. Do you want me to explain that?

Q. No, I would like an answer to my question.

A. Will you read the question, please?

Mr. Rose: Will you read it, please?

(The question was read.)

The Witness: As these documents were sent to my mother's home, which was the way they were transmitted to me from Mr. Danziger, I used to cut out the name——

Q. Just a minute, let's stop right there. Did you ever see Mr. Danziger in any place other than New York City?

A. I think I saw him on the way down to Wilmington when we drove down there one time.

Q. And then you returned to New York City?

A. I think so. [976]

Q. Isn't it a fact that the only times you ever

(Testimony of Willard Eugene Warren.)

saw Mr. Danziger was some four or five times in New York in 1935?

A. Oh, I would say it was a great many more times than that.

Q. Was it a dozen times?

A. Well, I couldn't say how many times, Mr. Rose.

Q. What is your best recollection?

A. Just numerous times.

Q. Did you ever, even, have lunch with him in New York?      A. I might have.

Q. Well, have you any memory of ever going to lunch with him on any occasion?

A. Not specifically.

Q. Do you ever recall going to a theater or place of amusement with him at any time in your career?      A. No, I don't think he went.

Q. Did he ever take you to dinner or anything else?      A. I don't remember.

Q. Well, other than the few occasions or numerous, as you put it, that you saw him in New York in 1935, the only other occasion that you ever saw Mr. Danziger was when he returned from England or Europe some time in 1937?

A. That is to the best of my remembrance.

Q. And you saw him at that occasion about twice? [977]

A. No; I think I saw him more often than that.

Q. How often?      A. I can't exactly recall.

Q. Do you know whether it was a nice moonlight night when Mr. Danziger returned from England?

(Testimony of Willard Eugene Warren.)

A. No, I wouldn't remember that.

Q. You don't remember that?

A. No, I wouldn't remember that.

Q. Now, I would like you to go back to the beginning of this thing here. You say that you called on Mr. Danziger. He hadn't communicated with you? A. I think I called on him.

Q. Well, don't you know whether you did or not? A. To the best of my recollection, I did.

Q. How did you happen to call on him?

A. Because I had been given his name.

Q. By whom? A. Mr. Howe.

Q. Mr. Howe was the broker in New York?

A. That's right.

Q. Mr. Howe was connected with the Trinidad International Petroleum, wasn't he?

A. I think he had some dealings with Mr. Danziger.

Q. In connection with Trinidad?

A. I think so.

Q. Well, don't you recall whether that was discussed [978] or not?

A. Yes, there was general discussion about it.

Q. Now, when you first talked to Mr. Danziger, weren't you informed that Mr. Danziger was back in New York primarily preparing to leave for Europe in connection with the financing of T. I. P.?

A. There might have been some discussion about him going to England.

Q. Let's see if I can refresh your recollection. During one of these discussions that you had with

(Testimony of Willard Eugene Warren.)

Mr. Danziger back in New York you told him that if he remained and didn't leave for Europe you thought you had some people who would buy the entire issue, isn't that correct?      A. No.

Q. Wasn't there any such discussion?

A. Not like that.

Q. In substance?      A. No.

Q. Did you mention that you thought you could sell \$100,000.00 worth of stock if he stayed another week or two?      A. No.

Q. Was there anything of the kind mentioned?

A. At what time?

Q. Before he left for England?

A. There might have been some discussion about we thought we could sell some stock. [979]

Q. Wasn't there any mention made that you could sell at least \$100,000.00 worth?

A. No, I don't think—I don't remember that.

Q. Was there any discussion to the effect or in substance that you could sell the entire outstanding issue to one person, a Mrs. Pierce?

A. No. Mr. Kramer made that statement.

Q. In your presence?      A. Yes.

Q. What did you say about it?

A. I just smiled, I didn't say anything.

Q. Well, what did Mr. Danziger say when Mr. Kramer made that statement? Isn't it a fact that he said, "I have to leave for England and I am going"?

A. He says, "That's fine, when I get to Eng-



(Testimony of Willard Eugene Warren.)

land I will give you every bit of co-operation I can, I will send you anything you need."

Q. That's what he said, you remember that?

A. Yes, sir, I remember that.

Q. But he said he wouldn't wait for it, didn't he?

A. He said he had to go soon.

Q. He said he had arrangements to finance the company over in England, didn't he?

A. He said something to that effect.

Mr. Rose: What I need is a Mr. Mainland, and then I can really reach in here and get these papers with dispatch. [980] Excuse me, your Honor, I haven't got these things in order; I would know it the minute I see it.

Q. By Mr. Rose: I have exhibited to government counsel a document composed of two pages, bearing a date November 14, 1935; I will ask you to examine that document and state whether you are the author of that document?

A. May I read it?

Q. Why, obviously; I wouldn't expect you to tell us about it unless you did.

A. This is my letter.

Q. Did you send that to Mr. Danziger when he was in England?

A. I don't remember just whether I sent it to England or whether I sent it to Miss Faulkner to forward to him, but I obviously intended it for him to receive it through one of the channels.

Q. You knew he was in England at the time?

A. Yes, I did.

(Testimony of Willard Eugene Warren.)

Q. Isn't it a fact that upon your transmitting the incident of the Kramer transaction, concerning which you testified, to Mr. Danziger, you received a cable telling you that you were through, you were all through, isn't that a fact?

A. I don't remember that very clearly.

Q. Didn't something to that effect take place?

A. There was quite a few cables that went back and [981] forth.

Q. Didn't he tell you that he was going to prosecute Kramer and that you were all through by reason of that incident?

A. No, I don't remember anything like that. I think he was displeased in one of his cables, and then subsequently he wired me and told me to take whatever action I thought was necessary to protect all of our interests, in another wire, in cable. Then as he thought the matter over, why, he continued to cable me to go ahead and prosecute business for him and try to clear the matter up on the Kramer matter, which I tried to do.

Q. Mr. Warren, didn't you receive a cable in substance and effect that by reason of this Kramer incident he would have nothing more to do with any of you on that deal?

A. If you show me the cable——

Q. Don't you know?

A. I don't remember it.

Q. You remember putting your rubbers on in some transaction, you remember that, don't you?

(Testimony of Willard Eugene Warren.)

A. Yes, some things you remember and some you don't.

Q. Do you remember putting on your rubbers on a rainy night?

A. No, I don't remember this cable that you speak about, though. I remember there were quite a few cables. If you show it to me I will be glad to identify it. [982]

Q. Have you any recollection to the substance or effect of those cables?

A. Yes, I have quite a bit of recollection about them, but I don't recollect it that way.

Q. Was any one to the effect that you were fired or through? A. Oh, no.

Q. Didn't you request him for permission to carry on, that a thing of that kind would not happen again? Yes or no, please.

A. I can't answer that yes or no.

Mr. Rose: Read the question to the witness again. Answer it in your own way. Read it without the yes or no.

(The question was read.)

The Witness: To the best of my recollection I wired him that I would do everything in my power to continue to do the business so that it would not jeopardize any of our interests.

Q. By Mr. Rose: Now, addressing your attention again to this letter of November 14, 1935, which you transmitted to Mr. Danziger, when you sent that letter to him did you purport to be telling him the truth?

(Testimony of Willard Eugene Warren.)

A. Well, I must have.

Q. I mean you didn't send this letter as a build-up or anything of the kind, did you? Did you mean, in other words, what you said in this letter?

A. Well, I suppose I did.

Q. Well, did you?           A. I suppose I did.

Q. Now, when you said, "This fellow is one of the most deceitful and cunning as well as vicious crooks I have ever seen. There was absolutely no need of doing things the way he did. He could have undoubtedly made a sale to Mrs. Pierce of \$100,000.00 and made a clean delivery and there would have been no complaint. I guess he simply has a warped mind," that was your attitude at that time after having heard from Mr. Danziger from England?           A. That's right.

Mr. Rose: I offer it in evidence as next in order, your Honor.

Mr. Lucas: No objection.

The Court: Admitted.

The Clerk: Defendants' G.

(The document referred to was marked as Defendants' Exhibit G, and was received in evidence.)

Q. By Mr. Rose: In the course of your testimony, from time to time you have been shown various letters coming from Los Angeles here, and you were asked who sent them, and you said in most of the instances, anyhow, that they were sent by Mr. Danziger. As a matter of fact, you were never in



(Testimony of Willard Eugene Warren.)

Los Angeles until you were brought here as a prisoner, isn't that correct? [984]

A. No, that isn't correct.

Q. When had you been in Los Angeles before?

A. In 1929.

Q. But you hadn't been here after 1929 until you were brought in here by the Government Marshal?

A. That's right.

Q. You, in fact, of your own knowledge, at no time have known who transmitted the particular letter to you that you received, did you?

A. I certainly did.

Q. When you received a copy of a letter did you know who had typed it?

A. Sometimes I did.

Q. Were you given a memoranda in each instance as to the authority of a particular letter or copy?

A. I would like to ask you, Mr. Rose, do you mean did I see it typed?

Q. Don't you understand the question that I just asked you?

A. If you asked me if I saw the letters typed, I did not see them typed.

Q. Did you know who put them in the mail?

A. I didn't see them put in the mail.

Q. Was there any memoranda of any kind attached to these particular letters or copies thereof that you received that accompanied them? [985]

A. There were notations in handwriting that I recognized as Mr. Danziger's.

(Testimony of Willard Eugene Warren.)

Q. That is, in such instances as you have identified a pencil notation, or something to that effect?

A. Yes.

Q. Other than that you have no knowledge who caused the matter to be transmitted to you?

A. Yes, I did have knowledge.

Q. Was there a memorandum in these things other than what you have indicated?

A. No. The fact that I expected to receive them and was in constant communication with the party led me to the conclusion that they must be to the parties who I was writing letters to and receiving letters from. There was a constant flow of that at all times. That gave me a very definite idea who I was receiving the letters from.

Q. I am going to pick out at random here—let's get back for a moment to this procedure of cutting out a segment of some of these exhibits, I am referring particularly to No. 110. In relation to the reception of this particular document, when did you cut this out?

A. Well, if the name was on it when I received it I cut it out. Otherwise Mr. Danziger would cut it out before he would send it to me.

Q. You remember testifying here, in response to Mr. Lucas' questions, in each instance wherever one of these [986] things had been cut out who cut it out, and you said "I did?" Do you want to change that testimony?

A. No, I don't want to change that.

Q. Is that a fact?

(Testimony of Willard Eugene Warren.)

A. You just asked me who cut out all these papers.

Q. All right. I know——

A. Some of them were cut before I got them.

Q. The record here shows——

The Court: Examine him from further back.

Mr. Rose: I was going to show him this, your Honor.

The Court: All right.

Q. By Mr. Rose: The record here shows that you testified you cut out these boxes or rectangular areas of these two papers of Exhibit 110. Now, did you or did you not cut them out?

A. I cut them out. [987]

Q. I am asking you a very simple question. When, in relation to the time that you received these documents, did you resort to that business of cutting them out?

A. I entered into an agreement with Mr. Danziger to do that early.

Q. You didn't tell us anything about any agreement of that kind.      A. I wasn't asked.

Q. Where was this agreement entered into?

A. After Mr. Danziger——

Q. I said where?      A. By mail.

Q. Where is the letter?      A. I don't know.

Q. Where is the agreement? Where is it?

A. It wasn't a written agreement.

Q. It wasn't?      A. No.

Q. You received it in the mail?

A. I didn't receive anything. I had a written

(Testimony of Willard Eugene Warren.)

understanding with Mr. Danziger not to transmit names.

Q. When——

A. Through the mail. It could be opened and seen.

Q. What is that?

A. I had an understanding that we wouldn't do that.

Q. When did you have that understanding?

A. All the way through. [988]

Q. When did you first discuss it?

A. In the very inception.

Q. In 1935? A. Yes.

Q. All right. I call your attention now to Exhibit 105, a pink sheet of paper that you say you received, to which is attached the original envelope bearing a postmark in 1937 as part of this exhibit, and call your attention to this letter here. Why didn't you cut that out?

A. Well, that is one that Miss Faulkner sent me, to the best of my recollection.

Q. Didn't you receive that from England?

A. Listen, I didn't cut them all out. I slipped up on some of them.

Q. You slipped up on it?

A. I cut out most of them, but some I would slip out on.

Q. Why did you save that envelope? And that is a pretty dangerous question.

A. I guess I don't know. It is just inherited to keep old things.



(Testimony of Willard Eugene Warren.)

Q. Why didn't you obliterate the name on that envelope?

A. Well, to tell you the truth, I don't know.

Q. I call your attention again to Exhibit 110, that envelope, and show you that you have torn out the name, the addressee there; you did, didn't you?

A. Yes, I did.

Q. Well, why didn't you throw the envelope away?

A. Because I was probably carrying it around for a while in my baggage, and I had such a bad experience about it that I didn't want to have names carried around, and I always took names and addresses off of envelopes that I received from the Wake Development Company.

Q. Very well.

Mr. Rose: With your Honor's permission, I was going to in the course of my mind take up a matter that might involve a little time, that is, the subject, and I thought I would ask your Honor if it is agreeable to the court to take the recess at this moment, or shall we go on?

The Court: That is satisfactory.

(A recess was taken.)

Mr. Rose: Shall I proceed, your Honor?

The Court: Yes.

Q. By Mr. Rose: Mr. Warren, I believe on your direct examination you had recounted that you had started in the business of selling securities back in 1922, was it, or thereabouts?

A. As near as I can remember I stated I had

(Testimony of Willard Eugene Warren.)

engaged in that business practically all my business life except [990] 1926, when I worked for the Hollywood Company, then in 1940, the latter part of 1940, when I went to work for the Grolier Society and worked for them for a couple of years, and then for a year for the Standard & Poor's Corporation in New York.

Q. Had you had anything to do with the sale of the Great Eastern Gas Company stock originally?

A. Yes, I lent some money to Mr. Palmer who was interested in that company.

Q. In other words, you had something to do with the formation of the Great Eastern company?

A. Indirectly.

Q. Well, did you participate in the sale of those securities?

A. No, I didn't sell any securities, if that is what you mean.

Q. Did you ever have a crew of salesmen?

A. No, I didn't have the crew.

Q. You knew somebody who had?

A. Yes, I did.

Q. And you would call upon them to assist you in the sale of securities from time to time?

A. You had better read that question to me.

(The question was read.)

A. Who do you mean?

Q. This person who had a crew of salesmen, stock salesmen. [991]

A. The question doesn't make sense to me, I am sorry. I just said that I didn't sell the stock.

(Testimony of Willard Eugene Warren.)

Q. You said you didn't sell the Great Eastern Gas stock.

A. And then you asked me if I would call upon them to assist me. I just said I didn't.

Q. You did sell various types of stock from time to time? A. Oh, yes, yes, before that.

Q. Did you ever sell any stock that was listed on the Stock Exchange? A. Yes.

Q. Did you sell any stocks that were listed on the curb? A. Oh, yes.

Q. For many years?

A. I beg your pardon?

Q. For many years?

A. During 1923, around in there, and '24.

Q. Now, you did mention in the course of preliminaries to the transaction concerning which you testified, that you were instrumental in having Mr. Danziger meet a Mr. Dube. Do you remember that?

A. I remember the Dube incident, yes.

Q. You knew Mr. Dube, did you [992]

A. Yes, I knew him.

Q. How long had you known him before you introduced him to Mr. Danziger?

A. I first met Mr. Dube in 1923, I think.

Q. He was connected with this Great Eastern Gas Company project, in some way?

A. No, not at any time that I know of.

Q. Under what name did Mr. Dube know you?

A. Warren Carter.

Q. He knew you under the name of Warren Carter? A. That's right.

(Testimony of Willard Eugene Warren.)

Q. Did you ever tell Mr. Dube your true name?

A. No, I never did.

Q. The only name he knew you under was Warren Carter, consistently?

A. Well, I wouldn't say that.

Q. Did you ever tell him you had any other name?

A. I didn't tell him I had another name.

Q. All right. Now, you mentioned a Mr. Palmer with whom you had some financial transactions involving the Great Eastern Gas Company setup?

A. That's right.

Q. How long had you known Mr. Palmer?

A. Well, I think I met Mr. Palmer in 1929 or '28.

Q. Did you ever have any kind of a written agreement with him at all? [993]

A. No.

Q. Whatever financial transactions you had with him were oral?

A. That's right.

Q. Under what name did Mr. Palmer know you?

A. Warren Carter.

Q. You introduced yourself as Warren Carter to him?

A. Either I was introduced to him or he knew me under that name.

Q. Did you ever tell him that your name was other than Warren Carter?

A. Well, I wouldn't remember that.

Q. I may be in error about that, but you told me that Mr. Palmer at the time you approached him—just before you approached him in connection



(Testimony of Willard Eugene Warren.)

with the Wake Development-Trinidad matters, had turned over the Great Eastern Company to a son-in-law, was it?

A. Yes, I understood it was his son-in-law.

Q. And what was his name? A. DeHart.

Q. D-e-H-a-r-t, is that right?

A. Well, I don't know how the spelling is. I thought it was D-e-H-a-r-t. I think it was something like that. I wouldn't know exactly.

Q. You had known Mr. DeHart for some time prior to that? [994]

A. Let me see, now. I think I met Mr. DeHart about 1934.

Q. What name did you tell him you had?

A. Warren Carter.

Q. You didn't tell him your true name?

A. I was known all that time as Warren Carter. I have been known as Warren Carter since 1922 or '23.

The Court: Why did you take the name Warren Carter so early?

The Witness: Well, your Honor, when I went to Chicago and went into the brokerage business there, the name just appealed to me and I took it. I can't give you any other explanation. There was no reason that I was running from anything then. I just took the name. Stock salesmen have a peculiar flair for doing that, taking some kind of high sounding name, but a name that they think sounds better over the telephone. I did a lot of work over the telephone, and the name Carter seemed to

(Testimony of Willard Eugene Warren.)

register well, and I started to use it and just continued to use it.

The Court: You went up there from Robinson, down state in Illinois?

The Witness: No, I didn't, your Honor. I went up there from Indianapolis, Indiana.

The Court: Had you been Willard Eugene Warren there?

The Witness: No. There was a short period of time that I worked for Archie Andrews, A. M. Andrews and Company, [1935] I started to work for Andrews & Company when I was just turned 19 years of age, I was known as Willard Eugene Warren, all through my school years, all during my life in Texas when I worked for the Y.M.C.A. there, and when I came north, when around 19 years of age I went to work for Archie M. Andrews, and at that time I got a job working on the telephone, and all the other telephone men used different names, and during that interval of about two years I worked for Archie Andrews I used the name of Willard Eugene Young.

The Court: What did you do for the Y.M.C.A. in Texas, what could be done for them in Texas?

The Witness: I was rather athletically inclined in my early days, and I used to assist the physical director there in taking charge of the boys' classes, and I played basketball on the Y.M.C.A. team there, and when I first went to Texas I played on the Methodist Church basketball team, we won the city league there, then I played on the Y.M.C.A. team

(Testimony of Willard Eugene Warren.)

and we won the state championship for about three years.

The Court: Continue, Mr. Rose.

Q. By Mr. Rose: Let's take up here with your first meeting with Mr. Danziger. As I recall it, you told us here that word had come to you from a broker named Howe respecting the presence in New York City of Mr. Danziger and some project, and you called up Mr. Danziger at the hotel; is that correct? [996] A. Yes.

Q. Were you alone? A. Yes, I was alone.

Q. You told him that you had heard about him from Mr. Howe, and he invited you up?

A. No. I called him on the telephone, I think, before I went up.

Q. That's what I have in mind, you told him that you had heard that he was in New York about some oil deal from Mr. Howe and you would like to talk to him?

A. Yes, something to that effect.

Q. And in any event, he invited you up to the hotel room, is that correct?

A. Yes, that's right.

Q. Now, when you came into the hotel room, what did you tell him?

A. When I came into the hotel room he had another salesman there by the name of Koch, who I knew.

Q. You mean Kramer?

A. And I told him——

Q. Just a second. Do you mean Kramer?

(Testimony of Willard Eugene Warren.)

A. No. I mean Mr. Koch.

Q. All right.

A. And I told him when I came in who I was. He came to the door—— [997]

Q. Don't tell us that. I want you to recount here what you told him. You told him who you were?

A. I told him who I was.

Q. What did you tell him?

A. I didn't say anything then, because I was busy——

Q. No. What did you say? You said, "I am Mr."—what?

A. I said I am Mr. Carter.

Q. You told him you were Mr. Carter?

A. Yes.

Q. When did you tell him you were Mr. Carmen?

A. Later on.

Q. How much later on?

A. After we went out to make sales, I told him I used the name of Carmen because——

Q. No. I say when did you tell him?

A. After I took the names out.

Q. What names?

A. The South American oil field names that he gave me to go out and call on.

Q. When and where in relation to your first meeting with Danziger did you tell him your name was Carmen?

A. I didn't tell him my name was Carmen.

Q. All right. You are in that room now and you recognize a man being present by the name of Koch?



(Testimony of Willard Eugene Warren.)

A. That's right.

Q. I am not going to interrupt you from that point on until you complete everything that was said between you, the man named Koch and Danziger at that occasion. Go right ahead and tell us what was said.

A. I don't suppose I can tell you everything; I can tell you everything I can remember.

Q. That's fine, go ahead.

A. "Mr. Danziger," when I went in, I said, "I am Carter."

"Oh, yes, Carter, come right in. Meet Mr. Davis."

He introduced me to Koch as Davis.

Q. I am sorry to have to interrupt, but I want to clear that up. He didn't say, "This man's name is Koch?"

A. Oh, no.

Q. He said, "Meet Mr. Davis," is that right?

A. Yes.

Q. So far as you knew, this gentleman that you have referred to had introduced himself to Mr. Danziger as Davis?

A. I don't know how he had introduced himself to Danziger; all I know is he said, "Meet Mr. Davis."

Q. Go on, and pardon the interruption; go on and relate the whole business.

A. So I says, "How do you do, Mr. Davis?" And then he says, "You don't mind if we conclude the business we are doing here, do you?" And I said, "Oh, no, go right ahead."

(Testimony of Willard Eugene Warren.)

And then he continued to talk to—— [999]

Q. Tell us what he said.

A. I don't remember what he said. He was talking about some names and going out on some calls and what time would he be back, and so forth. I couldn't repeat that conversation.

Q. Go ahead and tell us what you do remember.

A. That is the best of my recollection, the general line of the conversation.

Q. Please tell us every word that you do recall?

A. Well, I can't do that, I am sorry.

Q. In substance?

A. Well, I am doing it in substance.

Q. Go ahead.

A. Then Koch got up, or Davis, and he had a brief case with his names in it, and he said, "Well, I will see you later, Mr. Danziger." And he left. Before he left he said, "Well, it is nice to see you again, Carter," and went out of the room. And after Mr. Danziger went over and closed the door he said, "Do you know this fellow?"

Q. Who said that? A. Mr. Danziger did.

Q. All right.

A. I said, "Yes, I know him slightly." He said, "I suppose you know him as Koch?"

Q. Mr. Danziger said that?

A. That's right. I said, "Yes, that's the way I do [1000] know him."

He said, "Well, he uses the name of Davis because he thinks it sounds better, and I found that

(Testimony of Willard Eugene Warren.)

stock salesmen usually like to use aliases, anyhow, and it makes no difference to me what name he uses," or words to that effect.

Q. Go ahead.

A. Then I said, "Mr. Danziger, I understand you have quite a nice oil deal, and I would like to hear something about it. I was talking to Mr. Howe about it, and he told me that you have quite a setup here. He also told me that you have a deal that is not subject to any regulations by the Securities and Exchange Act. Since that is a rare thing nowadays, I would like to hear about it."

He says, "Yes, I have got one of the finest deals, I think, that a man could want to sell right now," he says, "And it has a lot of good advantages to it. If you will sit down I will explain it all to you." And he proceeded to tell me something about his deal. Then he told me that——

Q. Go ahead. What did he tell you?

A. I will tell you. Then he told me that he had a company called the Trinidad International Petroleum Company, which he had organized himself, and he said that he personally had, by his experience in the oil business, selected as the properties for this company what in his opinion was the finest group of oil leases that could be obtained. He told [1001] me that due to his long experience in the oil business that he thought he was in a very good position to judge good properties.

The Court: I am going to interrupt you there a minute. I noticed in some of the correspondence

(Testimony of Willard Eugene Warren.)

that there was a prophetic reference to the event that Great Britain might even be barred from the Mediterranean, and that that would add to the value of oil in the British West Indies; do you remember that being discussed?

The Witness: I remember some correspondence about it, your Honor, but——

The Court: I mean at this particular time that you were talking to Mr. Rose.

The Witness: No, I don't think there was any particular stress talked about that at that particular time, because there wasn't any war situation at the time.

The Court: That is why I refer to it as prophetic.

The Witness: I say at that particular time I don't remember the conversation being about the Mediterranean at all. I don't think we even talked about the war at the time.

The Court: Go ahead.

The Witness: I don't think anybody would have known it.

He told me that he had been formerly a director and a vice president of the Pan-American Petroleum and Transport [1002] Company, and he had been associated with Mr. Doheny a good many years, and that as the result of this association with this man that he had acquired a great knowledge about the value of oil properties. He told me, in addition to that, that he had a group of leases under his control in the State of New Mexico, and



(Testimony of Willard Eugene Warren.)

that in due course he intended to drill these leases, and he thought he had a great potential oil pool there. He said the object of being in New York was to raise funds so that he could eventually develop the properties.

I then asked him if he intended to raise all this money by the sale of stock to these South American stockholders that he had, and he said, well, he had got the list some time previously and he had been a little disappointed about the results, that he hadn't been able to make as many sales as he had anticipated, and that he was in dire need of money, that if he could get enough money to go to England to finance himself that he thought that he had excellent prospects over there of floating the stock issue over there. I asked him then about the registration, how he avoided registration. And he said, "Well, that's very simple." He said, "All the stock was issued out of the treasury to the Wake Development Company on the acquisition of the properties, and the personally owned stock of the Wake Development Company, according to the law, and I am a lawyer," he said, "I know what the law is on those things, is exempt under the [1003] provisions of the Exchange, the Securities and Exchange Act." He said, "Of course, that is the stock I am selling. I am selling the personally owned stock of the Wake Development Company, and I am issuing the rights on that stock."

I asked him what he had in the form of literature or sales material. He showed me several letters

(Testimony of Willard Eugene Warren.)

that he had, photostatic copies of letters that he had signed himself on the Pan-American Petroleum and Transport, a couple of pages written on the literature of the Pan-American Petroleum and Transport Corporation, and a photostatic copy of a letter from Mr. Doheny stating that he had come with him early in his youth, and a couple of photostatic copies of, I believe it was on Standard Statistics letterhead, showing the earnings of the Pan-American Petroleum and Transport Company and the Mexican Petroleum Companies during the years he was supposed to be with it, and so forth. Then he showed me the form of irrevocable stock power or an order to sell securities, made out under the name of Wake Development Company, authorizing the Wake Development Company to sell any securities that he had there. And he also showed me on a Wake letterhead a form of authority in blank, which stated that the representative was a due representative of the Wake Development Company and was authorized to offer shares of stock in the Trinidad Petroleum Company, and so forth, and to be countersigned down in the lower left-hand corner. [1004]

He had a large briefcase there, and he brought out a number of papers, I can't remember them all, but that was about the sum and substance of that conversation about the company.

And then he said, "Now I think that the salesmen that have been working on this deal haven't been quite up to par." He said, "I think there are

(Testimony of Willard Eugene Warren.)

a lot of good sales in this list, Carter, and I think you can go out and make a lot of good sales.” He said, “Of course, they won’t all be good; you have been in the selling business long enough to know they are not all going to be good, but you will find good sales, and I have a group of names here if you want to go out on, go out and sell them.” He said, “Are you going to sell them under your right name” or something to that effect. And I said, “No, I haven’t been selling securities for quite a while. I think I will take the name of William Carter and sell it under that name.” He said, “I don’t care what name you sell them under. It doesn’t make any difference to me what names you use.”

He gave me some names. I asked him how many names he had, and he said he had a few hundred, and I said, “Can you give me some in the nearby community?” And he said, “Yes.”

And I took some of the literature and some of the names, and then he had a right certificate that had been printed, he had two forms of right certificate, he had one with a border running to the right and left, and then he had one with [1005] the border running perpendicularly, the reading matter perpendicular, and the other border runs on the side, sort of oblong, and he said, “Here, I have these two types, one I had printed and the other somebody else had printed, “I don’t know who,” he said. I took the right certificate out that he gave me. He said, “When you get to a stockholder, sometimes these names are a little wrong on here,

(Testimony of Willard Eugene Warren.)

they won't have the same number of shares that the card or list here has; if there is any discrepancy," he says, "in the name or in the number of shares, you can interrogate the man and find out ahead of time how many shares he has, and then you can write the right number of shares in there." He said, "I guess you are familiar with all those things?" And I said I thought I was.

That was about the extent of our conversation the first time. I left him then.

Q. By Mr. Rose: Now, to the best of your recollection you have told us everything that you recall that was said at that first occasion?

A. I have tried to.

Q. All right. Is there anything else that you can remember that you have omitted?

A. Not for the moment, no, I can't think of anything else now.

Q. By the way, can you tell us who you had seen the day previous to that occasion? [1006]

A. No, I don't think so.

Q. Or two days previous? A. No.

Q. Or a week? A. No.

Q. You don't remember any person you saw in the previous week?

A. Well, outside—I probably went down to Howe's office and went down and saw Mr. Howe.

Q. But you don't have any memory of that?

A. Not unless I had something to refresh my memory with.

Q. Now, let's go on to the next occasion when you saw Mr. Danziger after the one that you have



(Testimony of Willard Eugene Warren.)

just related. How long, in time, to your best memory, was it that you next saw him?

A. Well, I think I saw him in about, probably four or five days.

Q. Will you relate who was present on that occasion, and tell us where you saw him?

A. I saw him at the hotel. I came back to the hotel. I can't remember whether I phoned him before I went up or not, Mr. Rose, but I might have; but I went up to the hotel.

Q. Let's skip that little detail and let's have both of you in the room, unless some conversation occurred over [1007] the phone that you recollect. Was there? A. It wouldn't have been——

Q. You are in that room there in the hotel in New York with Mr. Danziger; was there anybody else present on this second occasion?

A. No, I don't remember anybody else.

Q. Do you mind telling us what was said on that occasion?

A. I had been out on some calls, I had made a few calls on the names, and I told him that I was disappointed, that I had called on a few names in Yonkers or Westchester, around in there, and all the names I had tried to contact, about 50 percent of them had moved away and were not any longer there, and that there were quite a few of them that I told him I couldn't find in when I called, that I naturally expected that, of course, I said, "That will happen on any list." Then I said the people that I did contact on the South American oil fields

(Testimony of Willard Eugene Warren.)

list appear to be very much against putting any funds in any other oil enterprises. They had told me their investments had been—they had been so disappointed at the money they had put in the other deals, and they had had a lot of real old propositions brought to them in their former companies, that they didn't feel that they were interested in putting any more money in, and would not be interested. In fact, they were worse than a cold turkey name, I told him. [1008]

Q. What did he say?

A. And he said, "Well, I am sorry you found it that way. Of course I can expect some of the names to be that way, it might have been that you just hit a bad bunch of names, but," he said, "have you any ideas or suggestions to make?" He said—I then told him before he said that, "This seems like an awfully nice setup; it looks like a real good deal." He said, "Yes, if we only had the right kind of a list we could really go to town on this deal." He said, "Tell me, you have been around a good bit, have you any suggestions about a list? Do you know where you could get hold of a good list?" I told him I thought I had a party in mind that might fit into the circumstances. But I said, "Of course, frankly," I said, "how are you going to make—how are you going to make any right possible to another company?" I said, "It has no affiliation with this thing."

He said, "Don't worry about that, that is my business, I know how to handle those things. All

(Testimony of Willard Eugene Warren.)

you have to do is worry about the selling.” He said, “I can fix up a right certificate,” he said, “I can fix up some kind of an agreement, any kind of an agreement that is necessary.”

I said, “But this is different,” I said, “than the South American oil fields. The South American oil fields company is out of existence and there would be nobody in evidence to object, if you went out and issued rights on [1009] any of them; but here these officers and directors are now in existence, and I don’t see how you could work out a deal, because this company isn’t in bankruptcy or receivership or anything like that.”

“Well,” he says, “if you will introduce me to the principal, I think that can be worked out.”

So I said, “Well, I have in mind a certain company that sold stock, and they haven’t had success in their drilling, and I believe they might be interested in it.”

Q. Now, have you stated all you recall in that conversation?

A. There might have been other things, but I can’t recall them now, Mr. Rose, just like these things, you get parts of it. I relate as much as I remember of the conversation. I might leave some out, I might not be able to remember every bit of it.

Q. Let me ask you this, Mr. Warren. In the discussion about this so-called right certificate, didn’t Mr. Danziger mention that some of the original men that are in this T.I.P. setup had had some-

(Testimony of Willard Eugene Warren.)

thing to do with these South American stockholders, and that they wanted to give them an opportunity to recoup?

A. There might have been some slight reference to a matter like that. If it didn't take place then, it did take place at a later talk with Mr. Danziger that I might have had, because I remember somewhere along the line, Mr. [1010] Rose, asking Mr. Danziger how he ever happened to get hold of these people, and all that sort of thing. And he told me that he knew a man that happened to be with them, or something like that. But that is very vague. He had some general idea. But the principal thing was that there were no officers or directors still in existence on the deal, and there was no deal made with that company, and he told me definitely there was. And I remember asking him at the time of my first conversation, "Why did you make the deal with them, and how?" He says, "There is no one here to object anyhow, so what is the difference? You don't have to worry about that." He said, "The officers and directors are all out of existence."

Q. Did you discuss the fact that this company that was active with its personnel, the Great Eastern Company, could possibly participate in this New Mexican prospect?

A. No, not at that time, Mr. Rose.

Q. Well, there was that discussion at some time?

A. At some time, I think later when he talked to DeHart, who I introduced to him later, as I have testified here, he did talk about making a contract,



(Testimony of Willard Eugene Warren.)

I think, that pertained to those New Mexican oil lands in the State of New Mexico.

Q. So far as your knowledge, at the time, of the personnel of the Great Eastern Company, they were, so far as you know, legitimately in that gas business, weren't they? [1011]

A. Yes, I had known definitely that they had spent about a quarter of a million dollars drilling for gas wells.

Q. And they had had bad luck in the locale where they had had their operations, isn't that right?

A. That is what I understood.

Q. And there was some discusison in your presence between Mr. Danziger and some of that personnel of the Great Eastern Company respecting an opportunity on their part to do gas drilling in the event that they went forward with the development of the New Mexican properties, isn't that right?

A. Let's see if I understand you right, Mr. Rose.

Mr. Rose: I think it would be best if I requested the reporter to read it to you. In the event you don't understand it, I will reframe it.

(The question was read.)

The Witness: At that time that matter was discussed I remember the point was brought up, I believe by Mr. DeHart, and he said, "What excuse could we have for entering into such an agreement with you?" And Mr. Danziger said, "Oh, that's very easily handled." He said, "I will give you some sort of contract in which you will get some

(Testimony of Willard Eugene Warren.)

kind of a right to purchase oil or a right to drill some gas wells," or something to that effect. Probably the contract speaks for itself, Mr. Rose, probably better than my testimony. [1012]

Q. By Mr. Rose: Mr. DeHart and his associates of the Great Eastern Company——

A. There is only one man, Mr. DeHart, that made the deal; there was no one else but Mr. DeHart.

Q. There was some talk with Mr. Palmer, wasn't there?

A. Yes, but he didn't enter into that contract.

Q. I didn't ask you whether he entered in. There was some discussion with him?

A. No, Mr. Palmer didn't come up and discuss the matter. Mr. DeHart did.

Q. Mr. DeHart came up to where?

A. Came up to meet Mr. Danziger.

Q. In New York? A. Yes.

Q. From Delaware?

A. No; from New York.

Q. Now, you related this second meeting with Mr. Danziger. How long after that was there the third meeting?

A. Well, I can't tell you that exactly, but within a very short time.

Q. Well, was it a matter of days or a week or so?

A. I would say it was a matter of days, because I was now interested in the transaction going on. If you are talking now about the third meeting, are you, Mr. Rose?

(Testimony of Willard Eugene Warren.)

Q. Yes. [1013]

A. That was when I brought Mr. DeHart up at the third meeting. We were discussing recently the second meeting; now we are at the third meeting.

Q. Yes. That is up in Mr. Danziger's hotel room.

A. We were at the second meeting of Mr. Danziger's when I finished.

Q. Hadn't you finished?

A. I think that covers practically most of the things that were said in general.

Q. Now, we have the third meeting, we have Mr. DeHart, yourself, and Mr. Danziger there. Do you mind telling us what was said then?

A. I introduced Mr. DeHart to Mr. Danziger, and I told Mr. Danziger that I had explained to Mr. DeHart the conversation that Mr. Danziger and I had previously had about trying to get a good list, and Mr. DeHart was the son-in-law of Mr. Palmer, and Mr. DeHart was now officially handling all of the affairs of the Great Eastern Natural Gas Company, and he would be in a position, as a result of his being vested with those powers, to enter into some kind of a contract whereby a deal could be rigged up, so that we would have an excuse to sell stock to the Great Eastern Natural Gas stockholders.

Q. You said that?

A. Yes, I told him that. I did most of the talking for Mr. DeHart, and explained as a sort of introduction what [1014] the situation was. And Mr.

(Testimony of Willard Eugene Warren.)

Danziger said, "That's fine." He said, "I understand, Mr. DeHart, you have quite a list of stockholders. How many stockholders do you have?" And Mr. DeHart said that he thought around twelve, fifteen hundred stockholders, between thirteen, fourteen hundred stockholders. He said, "That's fine, I suppose Mr. Carter here has explained to you a good deal about who I am and what I represent?" And he said, "Yes," he understood that. He said—he says, "We can get down to making a contract." So then he started to lay out the plans of a contract, I can't remember all that, except there was discussion back and forth about how the contract should be drawn, and Mr. Danziger did most of the talking about that, and he sat down and wrote out a contract, and I believe at the time he didn't complete it. He just drew a rough draft and said if Mr. DeHart came back later he would have the contract drawn up.

And that is about all that was said at that meeting in sum and substance.

Q. How long after that did you next meet Mr. Danziger?

A. Well, I think Mr. DeHart went up and completed the contract, and I don't think——

Q. That was outside of your presence?

A. I think it was done outside of me, I don't think I was there when he actually signed it. I might have been somewhere near, but I don't think I was right there at the [1015] time of the signing.

Q. So far as your memory goes, though, the



(Testimony of Willard Eugene Warren.)

actual agreement entered into on behalf of the Great Eastern through Mr. DeHart, and Mr. Danziger and others, was signed outside your presence?

A. I am sure it was. I am positive I wasn't present when he signed the contract.

Q. After this contract had been signed, did you have a talk with Mr. Danziger?

A. Yes, I had a lot of them.

Q. Tell us those that you remember.

A. Well, I couldn't do that unless you will ask me specifically on what one occasion. I try to give you the general background of the whole thing, Mr. Rose, and if you will be specific here and tell me—I just couldn't go on and tell you about a lot of conversations with Mr. Danziger, because I had a great many conversations with Mr. Danziger.

Q. In these several conversations that you had with Mr. Danziger preceding his departure for England, had he told you anything other than what you have already related here affecting the character and nature of the properties involved?

A. Yes, I will say that Mr. Danziger always tried to tell me that the properties were very good.

Q. Did he ever tell you anything to the contrary? A. No, he never did. [1016]

Q. From your observation as a man of experience——

A. He told me they were very fine properties.

Q. Did he ever tell you anything otherwise?

A. What do you mean "otherwise"?

Q. Well, did he ever tell you he had changed

(Testimony of Willard Eugene Warren.)

his mind about the character or value of these properties?

A. Never to my knowledge. He always boosted them.

Q. Didn't he tell you he expected to become very wealthy out of the actual oil production?

A. Well, he might have said that.

Q. He told you that primarily he was merely interested in selling the personal stock of the Wake Development Company to a small degree to defray expenses in connection with his trip to Europe and get the matter actually financed for drilling purposes abroad, isn't that correct?

The Court: You can go into that after lunch.

Mr. Rose: May we have an answer, your Honor, just to that one question, please?

The Witness: Will you read that question again so I can make sure I understand it?

(The question was read.)

The Witness: Now, what do you mean by a small degree, Mr. Rose, please?

Q. By Mr. Rose: You finally entered into an escrow for only 25,000 shares, isn't that right?

A. Yes, but I understand Mr. Danziger wanted to sell [1017] 100,000 shares or more, if he could.

Q. Didn't he tell you that he was going to arrange that business in England?

A. No, he said, "You can sell 100,000 shares." I remember it came up. I said it wouldn't pay just to sell a small amount of 25,000 shares, if this deal worked and starts to click with the Great Eastern

(Testimony of Willard Eugene Warren.)

names, and the salesmen start bringing in money, it wouldn't pay me to start this deal on 20,000 shares.

He said, "Don't worry about that; you can get all the stock you want." I said, "I want to be sure I am protected on that."

Q. But he told you——

The Court: I am sure this is quite an extensive subject you are on now, and I want to talk to you about our immediate future. I want to accommodate our immediate plans as much as I can to you gentlemen.

Do you want to continue the case tomorrow or any part of tomorrow?

Mr. Rose: Frankly, your Honor, I am in a dilemma. I want to ask your Honor if you see fit to do so to not have a session tomorrow, for this reason:——

The Court: All right. You don't need to give reasons. I am going to follow his wishes more than yours.

Mr. Lucas: That is quite agreeable.

The Court: You and I are public officials; we are not [1018] under the pressure of private practice. We have both practiced privately, and you know the man in private practice has the harder end of it in a long case.

Monday morning I have set myself a law and motion calendar; do you want to go ahead Monday afternoon or Tuesday morning?

Mr. Rose: I would just as soon go ahead Monday afternoon, if your Honor has the facilities to handle it.

(Testimony of Willard Eugene Warren.)

The Court: Monday afternoon, then, at 2:00 o'clock.

Mr. Rose: I am sure we are going to conclude this matter in the time indicated by the court.

The Court: What time is that?

Mr. Rose: I think your Honor indicated that by the first you were going to start another trial.

The Court: I don't remember. It has been so long ago that I don't remember. I have to quit a little early this afternoon, so I would like to resume at 1:30 this afternoon and quit at 4:15.

Mr. Rose: Yes, your Honor.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m.) [1019]

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Los Angeles, California,  
Friday, January 26, 1945, 1:30 p.m.

WILLARD EUGENE WARREN,  
(WARREN C. CARTER)

called as a witness by and on behalf of the government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued)

Mr. Rose: Will you please read the last question and answer?

(The record was read.)

By Mr. Rose:

Q. Well, as a matter of fact, when you first met Mr. Danziger, or in the very outset of your dis-



(Testimony of Willard Eugene Warren.)

cussion of this subject with him, he told you prior to coming to New York he had already arranged the financing of the actual operations of the Trinidad Company in England?

A. What is the question?

Mr. Rose: Read the question.

(The question was read.)

The Witness: I don't understand. You made a declaration; you didn't ask me anything.

Q. By Mr. Rose: Well, I will see if I can't ask you something. I think you mentioned that at your first meeting with Mr. Danziger he had a big briefcase and showed you a lot of wires and letters, did he not?

A. He showed me a lot of literature on Trinidad [1020] International Petroleum Company and a lot of letters that he had written, sample letters on the South American Oil Fields deal and Trinidad International Petroleum Company, a lot of discussion about those papers, but no wires——

Q. Did he show—— A. Pardon me.

Q. Haven't you finished your answer?

A. I don't remember him showing me a lot of wires.

Q. Did he show you any wire?

A. Well, I wouldn't remember. It isn't fresh on my memory.

Q. Did he show you any letters that he had received from a firm in England?

A. I don't remember that.

Q. Do you remember any firm of Sutherland and Company being discussed?

(Testimony of Willard Eugene Warren.)

A. I don't remember it now.

Q. As a matter of fact, didn't he show you a tentative form of agreement for the actual sale of oil, in fact, from the Trinidad properties that had been sent over here from England?

A. I don't remember it.

Q. Well, at no time prior to Mr. Danziger leaving for England were any arrangements made for the disposition on your part and your associates of more than 20,000 shares of the privately owned stock of Wake Development Company? [1021]

A. Only verbally.

Q. Well, you just told us here a few minutes ago, as you remember, that you had some argument when you were informed that there was only 20,000 shares sought to be sold. That was before you went to Delaware, wasn't it?

A. I think it was.

Q. And after you went to Delaware and after the arrangement was made an escrow was opened for only 20,000 shares, isn't that correct?

A. Yes, but we had an understanding.

Q. Wasn't that what the escrow was opened for?

A. The escrow for that particular part in Commonwealth Trust Company was a parcel on 20,000 shares. That is all he wished to leave there.

Q. I have exhibited to counsel for the government a telegram, and ask you to look at that and read it and state whether you didn't see that before Mr. Danziger left for England?

A. I never remember seeing it.

Q. Would you say you did not?

(Testimony of Willard Eugene Warren.)

A. I never remember seeing it, Mr. Rose.

Q. Addressing your attention to the form of material in this message, does that refresh your recollection that a discussion was had concerning that situation being existing before he came to New York? A. No, I don't remember it. [1022]

Mr. Rose: May this be marked for identification?

The Clerk: H, for identification.

(The document referred to was marked as Defendants' Exhibit H, for identification.)

Q. By Mr. Rose: I show you another document that was exhibited to opposing counsel and ask you to read that and state whether you saw that when you were in New York?

A. I am positive I never saw this.

Q. Of this you are positive? A. Yes.

Q. While I am having it marked will you look at this series of papers and state whether you saw those.

Mr. Rose: May this be marked for identification?

The Clerk: I.

(The document referred to was marked as Defendants' Exhibit I, for identification.)

The Witness: Do you want me to read the other letter, too?

Q. By Mr. Rose: Haven't you been reading these papers?

A. I have read the first letter. Do you want me to read this, too? I didn't see this letter (indicating). I didn't see either one of these.

(Testimony of Willard Eugene Warren.)

Mr. Rose: I ask that this be marked next in order.

The Clerk: J.

(The document referred to was marked as Defendants' Exhibit J, for identification.)

Q. By Mr. Rose: Before leaving for England, didn't Mr. Danziger tell you that he actually had an agreement with these people in England whereby they were going to start the operations and prepare to actually drill for oil on these Trinidad properties?

A. I don't remember him saying that.

Q. Did he say that, in effect?

A. He talked about going to England and meeting some people, but I didn't know who they were.

Q. Well, let's go back to the series of conversations you had with him before he left for England. You were telling us about conversation you had after the agreement had been entered with the General Electric, or, rather, the G. E. Gas, and Mr. Danziger and the Wake Company; when did you speak to him after that?

A. Well, to the best of my recollection I saw him immediately—I went up to his room just about the time that he had completed his arrangement with Mr. DeHart. I was downstairs in the hotel, to the best of my recollection, and I do remember that at that time we stated it would be necessary now that the contract had been finished to get busy on papers and letters, reconstructing letters that would be necessary in building up the Great Eastern deal. And Mr. Danziger said, "Now, I don't want you



(Testimony of Willard Eugene Warren.)

to hesitate on me, I will give you all the assistance I can. I want to get busy on this deal and get started.” [1024]

Then I said, “We ought to have some kind of a letter like the one you used in the South American deal there, except I would like to see that letter again that you showed me on the occasion of our first meeting, the one that you referred to the hundred thousand shares of stock, which you are not going to sell to these people.”

Then he got that letter out again. And at that time I think Mr. DeHart left right about that time, and he said, “I will leave you fellows alone to work these things out.” And to the best of my memory we started to construct that literature at that time, to get the first letter that could be sent out from the Trinidad Company, and to write up an inquiry blank that could be sent to the stockholders. Then we had to write up a right certificate. And Mr. Danziger took care of all of that writing. He did it in pen and ink. He asked me if I knew a printer, and I said I knew a printer downtown by the name of Carmen Gould. He had done some work for me. And I can’t remember now whether Carmen Gould sent the boy up to get the stuff, the copy we prepared, then or not, but we either did that or else I took the papers away with me and went down to arrange to have it printed, because I know Mr. Danziger didn’t go down there himself.

Q. Now, have you related all of the conversation had up to that point between you and Mr. Danziger?

(Testimony of Willard Eugene Warren.)

A. To the best of my recollection it was along those lines. There might have been some other things, but for the [1025] moment they don't occur to me.

Q. When is the next time you saw Mr. Danziger prior to his leaving for England?

A. I saw him a good many times between then and the time he went to England, because our deal hadn't started then; we hadn't even had the right certificates printed then, and before he went to England I remember, oh, about a week transpired before we got the right certificates for the Great Eastern deal.

Q. After you got those, what conversation did you have?

A. I remember I got those downtown myself from the printed and took them up to his room. And he said, "Well, that looks like a fine job." There was some discussion about the payment of those right certificates. He said, "How are we going to pay for these things? Shall we deduct it out of the first commissions or money that you earn, or how?" And I said, "Well, I put it on the tab," to the best of my recollection, and I said, "I will take care of it as soon as we make a little money on the deal." To the best of my recollection we said words to that effect. And then he said, "Well, I would like to have some of these. I guess you will need the largest number of them. You don't mind if I take some with me?" And I said, "No."

Q. You mean Danziger was going to take some with him—— [1026]

A. Yes.

(Testimony of Willard Eugene Warren.)

Q. ———to England?

A. No, he wasn't leaving for England then. He said, "I will keep some of them." He said, "I guess you will need most of them in working the deal." Then after I showed them to him I took them away with me. I remember telling him in the next week or so that I had made a connection to get a hold of some other salesmen, and I thought I would take a room, and I think we made our headquarters in the Wellington Hotel. I am positive we went to the Wellington Hotel, and that was our headquarters.

Q. That was your headquarters?

A. That was the headquarters for the salesmen to come into that I was arranging to get together.

Q. How many salesmen did you have?

A. I think I had about four in the beginning, and I think I finally——

Q. Wait a second. Let's clear that up while we are at it, and we will be finished with it.

What were the names of these four salesmen?

A. One was Jack Byers, the other one was Franklin or Kramer as the name he used; had another fellow named, to the best of my ability and recollection, Goldstein, I think, or Goldsmith.

Q. Did he use the name Goldsmith or Goldstein in his stock—— [1027]

A. No, he didn't use that name; he used some other name. I can't remember offhand that name. It might have been anything. I can't think of it for the moment.

(Testimony of Willard Eugene Warren.)

Q. Who is the fourth one, now?

A. We had another man that Kramer brought in, and I don't remember his name, offhand. I never paid much attention to their names, because usually——

Q. I didn't ask you why you didn't do something. I just want to know their names. Incidentally, while we are on the subject of names, did you make it a point to keep a record of any particular name you used at any particular occasion?

A. In what way, Mr. Rose?

Q. Well, I mean did you carry some sort of book or paper in which you made a notation——

A. No, I didn't; only to record it in——

Q. Wait until I finish this thing, and then I will give you all the opportunity in the world to answer.

What I have in mind is this: Let's assume that you went to Jones to sell him some stock, and you used some name other than your own, did you make any kind of a memoranda to refresh your memory that in dealings with Mr. Jones your name was, let's say, X?

A. Well, I didn't use any names until after the Pierce deal, and some time after that. I didn't do any selling, so I didn't have any occasion to do it. After—— [1028]

Q. Wait a minute.

A. After I started to sell a deal, that is when I started to use names, and then I didn't make any record of them; I just need one name for awhile and then changed it to another name.



(Testimony of Willard Eugene Warren.)

Q. Let me clear that up so we will understand each other. The only name that you used prior to this Kramer transaction with Mrs. Pierce was the name of Carter; is that correct?

A. Carmen.

Q. Carmen? A. C-a-r-m-e-n.

Q. That was the only name you used?

A. That's right.

Q. It was after this Pierce incident that you resorted to the practice for a particular period of using a particular name, is that it?

A. Some time after that I did that, yes.

Q. How long after that?

A. Well, it was after I left Chicago.

Q. When was that?

A. I think that was along in May or June, after my trial in Chicago under the name of Carmen.

Q. It was after you had been tried in Chicago under the name of Carmen—that was in '36 wasn't it? A. That was in '36, yes. [1029]

Q. It was after that that you started using some other names than Carmen and Carter for a particular period.

A. Yes, I used names after that, yes.

Q. Did you keep any record of what name you had used in dealing with a particular person?

A. The only record I had is as I would receive letters back from Los Angeles pertaining to these deals, I would record down anything that wasn't embodied in any of the literature on a memorandum, usually, attached to it. I usually used, for in-

(Testimony of Willard Eugene Warren.)

stance, the name Williams for, maybe, a month or two or three.

Q. During what interval did you use the name Williams?      A. About 1938, I guess.

Q. What period in '38?

A. Well, I don't know. Probably a three months' period around there. I think I used the name Williams with Pitts——

Q. No, no; let's have the period, never mind the person.

A. I can't give you that exactly, because——

Q. Don't tell us why you can't. See if you can answer my question. You say here that you used the name Williams for an interval, to your recollection, of three months during the year 1938. Now, when did you start using the name Williams in that year and when did you cease? [1030]

A. About the first of 1938 I started to use the name Williams for about three or four months in there.

Q. All right. Then that would take us up to about April?

A. Well, let's see. Yes, it would take me up to about April.

Q. All right. May, 1938, what name did you resort to using?

A. I might have used the name of Edwards after that.

Q. Do you actually remember using the name of Edwards during the period of May, 1938?

A. No, I can't say that I do.

(Testimony of Willard Eugene Warren.)

Q. What is your best recollection as to the time when you started using the name Edwards?

A. I think I started using the name of Edwards in 1936 with Miss Parsons, and used it all the way through with her.

Q. When did you start that? A. Then I—

Q. Wait a minute. When did you start using the name Edwards in '36? A. When?

Q. Yes. A. I think I met Miss Parsons—

Q. I didn't ask you about Mrs. Parsons at all. I asked you when you started using the name.

A. Some time around October in '36. [1031]

Q. When did you cease using the name Edwards?

A. I think I quit using the name Edwards in 1939.

Q. Now, then, you used the name Edwards intermittently during that three-year interval?

A. I think I used it once or twice.

Q. You told us in '36 you used the name Edwards? A. That's right.

Q. Then you didn't resort to the name of Edwards again until '39?

A. No; I used the name Edwards in '37, because I made a couple of deals with Mrs. Parsons in '37.

Q. Did you make a record that you had been using the name Edwards in the Parsons transaction, a written memoranda?

A. Not particularly.

Q. Well, did you or did you not?

A. I don't remember.

Q. You don't recall? A. No.

(Testimony of Willard Eugene Warren.)

Q. Did you at any time make a memorandum in some form in which you recorded any of these names that you reputedly used, other than those you have already indicated?

A. I wouldn't see the reason for it. I can't remember of ever making a record. I might have—but the only record I would have ever made is the one with Los Angeles, if I send them the name, so they would know what name I was using. [1032]

Q. Did you keep a record of your own to indicate what name you had used on a particular occasion?

A. Not a definite record.

Q. Any kind of a record?

A. Well, I might have wrote it down on a piece of paper.

Q. Do you have any memory of having done that, in fact?

A. Yes, I think I have written the name down once or twice.

Q. And where was that record?

A. I don't know.

Q. When did you last see it?

A. I don't remember.

Q. When did you resort for the first time to the use of the name A. L. Roberts?

A. I think about 1938.

Q. What part of '38?

A. Oh, about the middle.

Q. And for what period of time did you continue to use that name?

A. Off and on for a couple of years.



(Testimony of Willard Eugene Warren.)

Q. Did you know anybody by the name of A. L. Roberts?           A. No.

Q. Did you ever meet one by that name?

A. No.

Q. When did you resort to the use of the name George Williams? [1033]

A. Well, I think that was somewhere in 1938.

Q. When in 1938?

A. About the first of the year, I think.

Q. How long did you continue to use that name?

A. I think I used that name about six or seven months.

Q. Then what name did you resort to using?

A. Well, I can't remember it in chronological order.

Q. In other words, you would resort to the use of either of these names as it occurred to you, and you have no memory of any particular occasion as to time when you used them, is that it?

A. No; you see, the only way I can reconcile the use of those names is by remembering the names of the people I sold, and I did remember those. For some reason or other they seem to remain in my memory a lot, although I do forget them occasionally.

Q. You do have recurrences in which you associate——

A. It comes back to me, the names I used.

Q. For instance, one of the names used in this indictment is George Wilson; when did you start using that name?

(Testimony of Willard Eugene Warren.)

A. I think I used that name in 1939.

Q. What part of '39?

A. About the middle of the year.

Q. How long did you continue to use that name?

A. Oh, I think I used that name for about two or three months. [1034]

Q. Did you know anybody by that name?

A. No. I don't recollect that I know anybody. I might have known somebody. I don't recollect it offhand.

Q. When did you start using the name George Dawson?

A. I used the name George Dawson the first time when I made the McHattie sale in 1936, after I come down from Canada. I represented the Wake Development Company and sold them——

Q. Did I ask you anything about that, Mr. Warren? I just asked you when you started using the name, as to time.

A. 1936—let me see now, to make sure. Yes, it was 1936 in October, I came down from Canada then.

Q. Did you know anybody by the name of George Dawson? A. No, I didn't.

Q. How long did you continue to use that name?

A. Well, I used that name for probably two or three months.

Q. Incidentally, during the year 1936, were you selling any securities or engaged in any other business in which you derived an income, other than the sale of this Trinidad stock?

(Testimony of Willard Eugene Warren.)

A. No, I don't think I was.

Q. You devoted all your time to the sale of Trinidad stock in '36?

A. A good part of it; a good part of it. [1035]

Q. Were you selling anything else?

A. I can't recollect.

Q. When had you been up to Canada?

A. I went to Canada in the fall of '36.

Q. You went up there on business?

A. That's right.

Q. Did you actually make a business connection up there?

A. Well, I called on a broker up there.

Q. Well, did you succeed in making a connection?

A. I was trying to make some kind of a deal for the Trinidad stock in Montreal.

Q. How long did you remain up there?

A. Well, I stayed up there for New Year's.

Q. You mean just for the weekend?

A. No; I think I was there for about three weeks.

Q. Who was the broker you were dealing with up there?

A. The broker who I called on, I didn't deal with him then, the broker I called on was one I had known previously, McLean and Company.

Q. What name did he know you by?

A. Well, it wasn't a he; it was Mrs. McLean.

Q. What name did she know you by?

(Testimony of Willard Eugene Warren.)

A. She knew me under the name of Carter, and she also knew me as Carmen.

Q. What was the occasion of using both names with her? [1036]

A. I told her I had been using the name of Carmen when I went up to see her.

Q. Did you go to see her to sell her some Trinidad stock? A. No, no, hardly that.

Q. During the year '37 did you have any form of activity or endeavor on your part with the object of acquiring a livelihood other than the sale of Trinidad stock?

A. Well, I don't remember of any.

Q. Now, would you say that you and your crew of salesmen——

A. Let me correct one thing I said, Mr. Rose. I believe you asked me if it was '36 I was in Canada. I was in Canada in '36, all right, but I went up there twice; I went there at the latter part of '35 and stayed there until '36 to New Year's, and then I went to Chicago, and I came back from Chicago and then went back to Canada again in '36. So that I want to get that—I want to get that just a little bit cleared up about the definite times. It is very clear to me now; I went there the very latter part, right around December of '35, and then I came back to New York and went to Chicago in '36, and I came back from Chicago in '36 and then went up to Canada during the summer, middle of the summer in 1936.

Q. Well, during the year '37 did you sell any-



(Testimony of Willard Eugene Warren.)

thing or engage in any useful occupation other than the sale of Trinidad stock? [1037]

A. I think I was working mostly on that. I don't remember anything else in '37.

Q. How about '38?

A. Well, I don't remember working on anything in '38.

Q. I was trying to remember the name, but I couldn't. You mentioned in the course of your testimony on direct the name of Sterling Securities Company; did you actually know of such a company?

A. Yes, I knew of a company like that in Toronto.

Q. Did you ever have any connection with it?

A. Once back in '34 I knew them.

Q. What was your connection with that?

A. Well, I shouldn't say it was a connection; I was just well acquainted with the people that ran the firm. I think at one time I started some negotiations with them that were never completed.

Q. In '39 did you have any occupation of any character other than selling Trinidad stock?

A. I can't remember any, Mr. Rose.

Q. Well, somewhere in the course of your testimony here, if my memory serves me, it is in connection with your approach of Hazelton, that is, Dr. Hazelton, you had procured Hazelton's name from some broker in New York and made a deal with him?

A. That's right [1038]

(Testimony of Willard Eugene Warren.)

Q. Do you remember the date of that contact you made with that broker?

A. Well, it was the early part of 1938 I did meet this broker, yes.

Q. What was his name? A. A. D. Phelps.

Q. Had you done any business with him before?

A. Yes, I did, on Trinidad stock.

Q. Well, you told me that he had given you the names of certain securities, among which was some tire company.

A. I didn't tell you, but I testified to that. I did get the name of Hazelton from him, yes; he gave it to me.

Q. Did you discuss with him that you intended to go up and get some of his stock away and cut his brokerage firm in?

A. No, no; he wanted to buy the stock, and he knew I was selling the Trinidad stock through the Wake Development Company, he knew the whole connections I had, so he wanted to give me a name so I could go out and make a sale on it and cut him in on the sale.

Q. Was he interested in acquiring this tire company stock?

A. He also, incidentally, said——

Q. No; was he interested in acquiring this tire company stock? [1039]

A. Yes, he had a market for it if I took it in.

Q. He gave you more than one name to go out and see if you could pick up that tire company stock, didn't he?

(Testimony of Willard Eugene Warren.)

A. Yes. He gave me about five or six names.

Q. Incidentally, did you ever use the name of Joseph Dube? A. No, I never did.

Q. At no time? A. No, sir.

Q. Who was Joseph Dube?

A. Joseph Dube was an associate of Mr. Palmer's.

Q. Connected with the gas company?

A. No; he had a brokerage firm down in Wilmington, Delaware for Palmer. He was the man, I think, that entered into the escrow agreement with the Commonwealth Trust, in some manner, shape or form. I don't remember all the details of that.

Q. Did you ever discuss with Mr. Dube an effort on the part of Kramer to personally acquire stock, that is, Trinidad stock?

A. Did I what?

Mr. Rose: It would be better if the reporter reads it to you.

(The question was read.)

Q. By Mr. Rose: Direct from the Trinidad Company or Wake? [1040]

A. Oh, yes, Mr. Danziger before he left for England made a deal with Dube, and I was instrumental in helping him make that deal, and Mr. Dube was in the whole setup.

Q. What was that deal?

A. Well, Mr. Dube was in some way involved in the deal with Mr. Palmer, and the escrow contract with the Commonwealth Trust Company, and

(Testimony of Willard Eugene Warren.)

I just can't say how that was made up, Danziger made that deal, but I don't think it ever operated very extensively except for a short time, because after that the Pierce deal came along and that threw a monkey wrench in everything.

Q. Aside from that was Dube and the Palmer people and others, to your knowledge, interested in trying to pick up some of that stock for themselves, that is, the Trinidad stock?

A. Interested in buying it for their own investment?

Q. Interested in buying it in some form for as little as they could get it for.

A. Yes, yes, sure they would naturally be interested in that, I imagine.

Q. As a matter of fact, certain persons to your actual knowledge participated in trying to get some Wake Development stock in their own names so they could, in turn, sell it to Mrs. Pierce?

A. Wake Development Company stock?

Q. Trinidad Company stock. [1041]

A. You said Wake Development Company stock.

Q. When I speak of the Wake Development Company, I mean the stock they owned in the Trinidad.

A. You mean somebody wanted to buy Trinidad International Petroleum stock, is that what you mean, counsel?

Q. Yes.

A. Now, you better read that question again.

(The question was read as follows:



(Testimony of Willard Eugene Warren.)

“Q. As a matter of fact, certain persons to your actual knowledge participated in trying to get some Trinidad stock in their own names so they could, in turn, sell it to Mrs. Pierce?”)

The Witness: Yes, I remember something about that. It was during the exchange of wires between Mr. Danziger and I in London, and I was representing Dube as the chief sales manager of the whole situation at that time, and during the course of our conversation I was endeavoring to make an additional sale to Mrs. Pierce, and I——

Q. By Mr. Rose: You were?

A. Yes, I was personally. And I was trying to straighten out the whole matter by making a personal sale with Mrs. Pierce, and I was negotiating with Mr. Danziger while he was in England to straighten out the whole matter. At that time there was some kind of a deal pending whereby Dube for us was going to buy a certain number of shares of stock and make a delivery to Mrs. Pierce.

Q. And—— A. That fell down.

Q. In connection with that program while Mr. Danziger was in England, this Dube crowd were trying to buy this stock——

A. It wasn't the Dube crowd; we were all together, everybody; it was the same setup as when Mr. Danziger left, the same setup exactly, and we were functioning just as he had left us. But we had the unfortunate circumstance to have this man Kramer run out on that sale that he had made

(Testimony of Willard Eugene Warren.)

when he was working for us, and that threw the whole thing into an uproar, and we were trying to straighten it out.

Q. I see. I have previously shown counsel for the government a telegram addressed to A. Faulkner, in care of Wake Development Company, and I will ask you to read that telegram and ask you to state whether you didn't send that telegram yourself.

A. Yes, I was the instigator of this telegram for Dube, I represented Dube, and I was the chief negotiator of the whole thing all the way through there, in the name of Dube, for him. He was the front for the picture.

Q. Mr. Warren, all I asked you was did you send this wire. Did you?

A. I am pretty sure I did.

Q. All right.

Mr. Rose: I offer it in evidence. [1043]

The Court: Admitted.

The Clerk: K in evidence.

(The document referred to was marked as Defendants' Exhibit K, and was received in evidence.)

Q. By Mr. Rose: Let's go back, if you will, Mr. Warren, and let's clear up all conversations that haven't been covered between your first and the meetings you have already testified to on cross-examination with Mr. Danziger prior to going to Europe, and let's clear all the rest of them up to the best of your memory, so we can pass on from there.

(Testimony of Willard Eugene Warren.)

What other conversations did you have with him that you have any memory of? I am not going to pin you down to a particular week or month, for that matter. We have covered certain periodical occasions; now in the interest of expediting this I would like you to tell us everything else you remember that Danziger said to you or you said to Danziger that you haven't covered before he left for Europe.

A. That is a pretty big order. Well, I do remember one thing that I omitted, on the occasion of my first visit, that I think I failed to mention here on the stand under your cross-examination. That was during my first visit with Mr. Danziger I interrogated him about the last paragraph of the letter, which I think I referred to here on direct examination, and asked him about why he had included in it a clause that 200,000 shares of the Trinidad International Petroleum stock had been registered with the Securities and Exchange Division, and that none of these—with an authorization [1044] to sell it at \$5 per share—but none of this offering shall be offered to you. I asked him on the occasion of showing me that letter what that meant, and he said, "I am surprised at you you don't understand that. That gives you the price for the stock, that shows it is registered at \$5 a share with the exchange." I said, "Then why do you say we are not selling them any of the stock?" And he said, "Well, you are not selling them that stock. That is only to give them the

(Testimony of Willard Eugene Warren.)

price \$5 a share for the stock, and that is without the notes. The notes have one pound par value, so they get \$10 par there." He said, "We are selling the Wake Development Company stock, and under that stock, which is not registered, and was owned by me, that particular parcel of stock that the Wake has acquired is not regulated by the Securities and Exchange Commission, and we can sell them that stock."

I said to him at that time, "Do you mean to tell me that we give them the inference from this letter that this is registered stock?"

He said, "Well, you can draw any conclusions you want to from that."

Q. He told you you could?

A. He said, "You, or anybody, could draw any conclusion they want to from that," meaning just what——

Q. Didn't he give you any private special instruction as to how to use that particular paragraph that you have just related you discussed?

A. He didn't need to give me any more instructions than that.

Q. That was enough for you?

A. That's right.

Q. You interpreted that that you were on your own then and you could amplify that to your heart's content, is that it?

A. Well, I didn't feel exactly that way about it, frankly. I had—those thoughts hadn't entered my mind at that time.



(Testimony of Willard Eugene Warren.)

Q. In other words, you started out on this deal before Mr. Danziger left for England with your thoughts being pure and intending to act legitimately, is that right?

A. When I started out on that deal my mind was neutral; I didn't know what it was going to be like.

Q. But your conscience was clear, you didn't think you were defrauding anybody you were selling on that deal? Did you have that in mind?

A. I didn't think about that.

Q. So far as anything you had heard up to that point from Danziger, and all of this literature he had shown you, and his enthusiasm about the future of that company, in your own conscience did you feel that was a good speculation?

A. I don't think I had very much thoughts about that.

Q. In other words, you had neither bad nor good ones, is that it? [1046]

A. Well, I was, you might say——

Q. Neutral?

A. Neutral in my thoughts about it. I just took it as it came.

Q. Well, you have just recalled some little thing you had forgotten to tell us about in this first conversation. Now, let's go back and see if we can clear that up and go on to something else. What other things do you remember were said to you by Mr. Danziger prior to his leaving for England that

(Testimony of Willard Eugene Warren.)

you have not told us about and which you now remember?

A. There have been so many things talked about here that I am not sure that I might repeat some of them, Mr. Rose. Could you give me some sort of an idea of what you mean?

Q. Well, I will tell you very frankly what I am trying to do. I am trying to develop in this testimony any matter of fact that you have failed to tell us about that was discussed between you and Mr. Danziger from the time you first met him to the time he left for England. If you have any memory of anything you haven't told us that he said to you, tell us about it and then we will pass on to something else.

A. Well, upon the sale of the stock we started to sell the stock——

Q. No. Tell us what you were talking about.

A. O. K. I remember talking to Mr. Danziger at the time we got sales kits for all the salesmen, and he furnished me some letters in blank on the Wake Development Company letterhead, which were supposed to be authorities when countersigned by the salesman's name on the bottom on the left-hand side, it would give them authority to represent the Wake; he gave me some stock powers which enabled the Wake Development Company to sell any securities that they took in.

Q. Go ahead, Mr. Warren, I am listening.

A. We had conversations at that time about the money.

(Testimony of Willard Eugene Warren.)

Q. That is about how much you were to receive?

A. That's right. We had conversations about that after this—just about the time or just a few days before we closed the contract with the Great Eastern Company. At that time I told him I thought that the 50 per cent commission arrangement which I had the offer to work on the South American oil fields was not enough to act as a representative for and to bring in an additional list and to pay salesmen out of. And at that time we drew up an agreement, and he and I discussed the terms of it, and we agreed on a 66 2/3 per cent. We arrived at that basis figuring a third of it commission and a third of it expense——

Q. You already told us about that.

A. I didn't know I had. I did on direct, but I may leave some things out. I just want to cover them. [1048]

Q. In other words, you discussed what——

A. Commission I would get.

Q. ——Dube and your group were to get and what the Wake Company would get?

A. That's right, we had that discussion. We had other discussions after the sales started about the first sale that was made by Jack Byers, the salesman. I remember that instance, too. We went up to his hotel, when I took the \$600 check up to the hotel, we had other conversations in addition to that about how checks were to be cleared, and

(Testimony of Willard Eugene Warren.)  
so forth. I think I testified to that on direct examination.

Q. Yes.

A. I may not repeat all those things to you, because it is hard just to remember them all here in chronological sequence, but if you will refreshen my mind I will be glad to go over them again.

Q. Let me ask you this: Did you ever mention the name of Arthur Winslow to Mr. Danziger?

A. Did I ever mention the name?

Q. Yes. Did you ever in talking to him mention the name Arthur Winslow?

A. After he came back from England, yes.

Q. You introduced somebody to him under the name of Winslow?      A. No, I didn't. [1049]

Q. Did you introduce anybody to him?

A. Nobody at all.

Q. Did you bring anybody up to the hotel where Mr. Danziger was when he returned from England?      A. I did not.

Q. Did you introduce him to any person?

A. Not to my recollection.

Q. Did you ever know anybody by that name of Winslow?      A. No, I didn't.

Q. I show you Exhibit 41. On your direct examination you testified you showed the facsimile of that letter to Mr. Danziger?

A. No. We drew this up before Mr. Danziger left. I did not show this direct copy. It was made later, to my recollection. Just about the time he



(Testimony of Willard Eugene Warren.)

left, or a short time after he left, they were printed, but the copy was all drawn up before he left.

Q. As a matter of fact, these letters were sent out to your Great Eastern Gas list after Mr. Danziger was in Europe?

A. Well, I am just a little vague on that. We sent some material out in 1935, just about the time that Danziger was there. It all came back to the Grand Central Terminal to a box under the name of Bishop, M. B. Bishop. They were sending these out right at the time Danziger was there, and he went over and got these returns right [1050] along about that time.

Q. This form of letter under Exhibit 41, in fact, wasn't even in existence when Mr. Danziger left for Europe?

A. I wouldn't say that, because the date here only means that we changed the date at the top, as we used the circular letter. It is a form letter and we multigraphed—this is a multigraph letter—and as we would multigraph a batch of two or three hundred names we would put another date on it.

Q. As a matter of fact, what is the date on that?

A. This one is October 28th.

Q. As a matter of fact, you cabled Mr. Danziger in November that you had just circularized the G. E. List, didn't you?

A. We circularized some before that, because I have seen names come in before that Mr. Rose, and I know Mr. Danziger had a box and we had some of the inquiries come back to the box in the Grand

(Testimony of Willard Eugene Warren.)

Central Terminal, and nobody could get into that box after he left.

Q. Immediately following this Kramer-Pierce transaction Mr. Danziger cabled this company that you were talking about here, Great Eastern Gas, and advised them that the agreement was cancelled, is that correct?

A. I wouldn't know. I never——

Q. Didn't you learn that he had cancelled the agreement? [1051]

A. No, I didn't. I never knew that he had cancelled anything.

Q. Didn't you make a request to be permitted to support yourself in a proper manner and go on with this deal?

A. After I sent the cable to Mr. Danziger, that went via Los Angeles, I think I sent it, the one you showed me—the Dube cable, I think Mr. Danziger was quite concerned and sent me some kind of a cable out saying that he didn't want any more sales made by these people, and so forth; and I think I cabled him back and told him that it was none of our doings, and so forth; and I hoped he would understand that. And then later I got cables from him to go ahead and use my own judgment to clear the matter up. It was just the flurry there during the time that Kramer ran off with that woman's securities, when everybody was sort of upset for the moment.

Q. Here is a cablegram addressed to Danziger,

(Testimony of Willard Eugene Warren.)

signed "Warren;" I will ask you if you are the author of that cablegram?

A. I notice we just circularized the entire G. E. List in this letter, that meant the balance of it.

Q. I know that. All I am asking you, Mr. Warren, is——

A. Let me read it, now.

Yes, I remember all of this very distinctly.

Q. There is only one question before you, Mr. Warren, and it is did you send this? [1052]

A. Yes, this coincides with the whole thing.

Q. All right. Now, read the next one here.

Mr. Rose: I offer that in evidence, your Honor, as next in order.

The Court: Admitted.

The Clerk: Exhibit L in evidence.

(The document referred to was marked as Defendants' Exhibit L, and was received in evidence.)

The Witness: Yes, I sent these, yes. I received a letter back in reply to all those, too, extending the arrangement from Mr. Danziger, around about that time. That was all straightening up the Pierce matter and the repercussions from it.

Mr. Rose: I offer the cablegram, your Honor, dated November 16th, 1935, J. Denziger, Park Lane Hotel, consisting of three respective parts, making one cablegram, as Defendants' next in order.

The Court: It is admitted.

The Clerk: Exhibit M in evidence.

(The document referred to was marked as

(Testimony of Willard Eugene Warren.)

Defendants' Exhibit M, and was received in evidence.)

Q. By Mr. Rose: Did you receive this letter or the original, of it?

A. Yes, sir, I received this.

Mr. Rose: I offer the letter just identified by the witness, your Honor, on the Park Lane Hotel stationery, under date of October 14th, 1935, as Defendants' next in order.

The Court: Admitted.

The Clerk: Exhibit N in evidence.

(The document referred to was marked as Defendants' Exhibit N, and was received in evidence.)

Q. By Mr. Rose: I hand you, Mr. Warren, a carbon copy of a letter addressed to A. Faulkner, Wake Development Company, under date of November 14th, 1935; do you remember transmitting a letter in that language to the addressee indicated?

A. Yes, I remember this letter.

Q. You sent it to the addressee?

A. Yes, I remember that. We weren't clear about the situation then.

Q. Mr. Warren, you will have ample opportunity to tell us anything you would like to tell us, I think. A. All right.

Q. All I am interested in is, you are the author of this letter and you sent it on or about the date it bears to the addressee?

A. That's right.



(Testimony of Willard Eugene Warren.)

Mr. Rose: I offer this as Defendants' Exhibit next in order.

The Court: Admitted.

The Clerk: O. [1054]

(The document referred to was marked as Defendants' Exhibit O, and was received in evidence.)

Mr. Rose: Is your Honor disposed to take a little recess now?

The Court: Yes, as soon as we mark this letter.  
(Short recess taken.)

Q. By Mr. Rose: For the most part, after Mr. Danziger left for England you carried on your communications until his return by transmitting letters or memoranda or wires to the Wake Development Company out here in Los Angeles, is that right?

The Witness: Yes, we did that after we concluded with the Commonwealth deal in Wilmington.

Q. Do you recall the occasion of the return of Mr. Danziger to New York?

A. Yes, 1937, I think, in July.

Q. Now, to your own knowledge how many persons did you see in the presence of Mr. Danziger during his presence in New York on his return from England?

A. I don't remember seeing other people with him. There might have been, but I don't remember. It seems to me we were alone.

(Testimony of Willard Eugene Warren.)

Q. Do you remember the \$7,000.00 check transaction about which you testified on direct examination? A. Yes, I do.

Q. You remember the transaction? [1055]

A. I remember the check.

Q. Where was it you saw that check?

A. I saw that check in the Imperial Hotel first.

Q. In New York City? A. Right.

Q. Who was present?

A. Mr. Robbins and Mr. Shaeffer.

Q. Who?

A. Mr. Joe Robbins and Mr. Shaeffer.

Q. How long had you known those gentlemen?

A. I had known Mr. Shaeffer for about three years, I think, but I just had met Joe Robbins about a week before the check episode.

Q. Did you know them by any other name?

A. Well, I knew Mr. Shaeffer as Dick, that's all. Dick Shaeffer.

Q. The three years you had known him as a salesman his name was Shaeffer, except for the first name, is that it? A. Yes, Dick Shaeffer.

Q. It was always Shaeffer? A. Yes.

Q. And how long had you known this Robbins?

A. About a week before the episode.

Q. How many times had you seen him in that week?

A. Well, we saw him two or three days before he went [1056] up to see Mrs. Parsons.

Q. Did you know what other names he used?

A. No, I didn't.

(Testimony of Willard Eugene Warren.)

Q. Do you know whether he used the name Winslow?

A. Well, I don't know what name he used, but I know that he didn't intend to use it. He said he didn't intend to use that name when he left.

Q. Well, let's see if I understand you clearly in that. In other words, Mr. Warren, he did mention the name of A. L. Winslow, but that he didn't intend to use it, is that it? A. We had that——

Q. Please, Mr. Warren.

A. No, he didn't intend to use the name Winslow.

Q. He told you that? A. That's right.

Q. But, in any event, there was some discussion between the three of you in which the name Winslow came up? A. That's right.

Q. When he left you he said, "I will not use the name A. R. Winslow," is that right?

A. It wasn't planned to use the name that way.

Q. I didn't ask you that, Mr. Warren.

Mr. Rose: Will you read the question?

(The question was read by reporter.) [1057]

A. He didn't say that when he left me.

Q. When did he say it, as to time, now?

A. He didn't say that in that way.

Q. Did he say "A. R. Winslow" at all?

A. Yes.

Q. Did you call that to the attention of Mr. Danziger? A. Yes.

Q. And that was while he was in New York?

A. That's right.

(Testimony of Willard Eugene Warren.)

Q. You told him that a man named Robbins intended to use the name of "A. R. Winslow?"

A. No, I didn't tell him that.

Q. Did you know for a fact whether Robbins was his real name?      A. No, I don't know that.

Q. Have you ever seen him since?

A. Yes, I have seen him.

Q. When?

A. Oh, I saw him for about a year after that.

Q. During that year did he ever use the name "A. R. Winslow" in your presence?

A. No, sir.

Q. Did you ever hear him mention the name "A. R. Winslow" more than once?

A. Oh, yes, I heard him mention the name of Winslow [1058] because we agreed to use that—

Q. No, I didn't ask you that.

Mr. Rose: Was there an answer?

(The record was read.)

Q. By Mr. Rose: You did hear him mention it?      A. Yes.

Q. All right. To your knowledge do you know whether this man named Robbins, the person that you have identified under that name, whether he, in fact called and visited Mr. Danziger?

A. He did not to my knowledge.

Q. You don't know whether he did or not?

A. I never knew of him visiting Mr. Danziger, not to my knowledge.

Q. Do you know whether Mr. Shaeffer did?

A. Not to my knowledge.



(Testimony of Willard Eugene Warren.)

Q. Do you know Mr. Robbins' handwriting?

A. No, I can't say I do.

Q. Did you ever see him write anything?

A. No, I didn't.

Q. Do you know Mr. Shaeffer's handwriting?

A. No, I don't.

Q. Did you ever see him write anything?

A. No.

Q. At any occasion?

A. I can't recollect, no. [1059]

Q. So far as your memory serves you, neither Robbins or Shaeffer has ever written anything in your presence?

A. Not in my presence.

Q. You were telling us yesterday that this \$7,000.00 check was endorsed by either one of the two individuals that you just mentioned, is that right?

A. That's right; it was my opinion that one——

Q. No. You saw either one of them endorse it?

A. No, I didn't say that.

Q. Well, did you?           A. No, I didn't.

Q. You never saw either one of them endorse it?

A. No, I didn't.

Q. Which one of those gentlemen handed you that \$7,000.00 check?

A. I don't remember which one handed it to me.

Q. Did one of them hand it back to you?

A. Yes, handed back and forth.

Q. He handed it to you and you handed it to him?

A. Yes, we all had it.

(Testimony of Willard Eugene Warren.)

Q. In other words, it went the rounds of the three of you?      A. That's right.

Q. I take it during this merry-go-round of this \$7,000.00 check, Mr. Danziger was not present,

A. Not then, no.

Q. Was he ever present when either of you three were together with that check?      A. No sir.

Q. Knowledge had come to you, isn't it a fact, that these gentlemen had made some kind of a deal with Mrs. Parsons, is that right?

A. Yes, we all planned it.

Q. And as a part of your plan wasn't it the intention of you three to acquire a block of Trinidad stock, privately owned by the Wake Company, for as little as you could get it, and then get as much as you could for that particular stock from Mrs. Parsons?      A. Yes, I guess so.

Q. Well, that was a fact, wasn't it; isn't that right?

A. Our object was to get as much money from Mrs. Parsons as we could—

Q. And pay as little to the Wake Company as you could?      A. That would be natural.

Q. That was your intent?

A. That was the plan.

Mr. Rose: I regret this delay, your Honor, but I have to dig out a portion of one of these voluminous exhibits.

For the purpose of the record, I have removed a portion of the contents of the envelope marked 73; I am going to direct an inquiry of this witness

(Testimony of Willard Eugene Warren.)  
with relation to several specific parts of that exhibit.

Q. By Mr. Rose: Mr. Warren, I call your attention to the signature on certificate No. 235, Preferential Profit-sharing Note, dated the 25th day of July, 1937, made to the order of Arthur Winslow, and direct your attention to the endorsement or assignment on the back of that, and ask you if you know that writing?

A. No, I don't.

Q. Did you ever see this before? A. No.

Q. I direct your attention to certificate No. 236, Preferential Profit-sharing Note, dated the 25th day of July, 1937, bearing the signature of "Arthur Winslow" on the assignment portion of that note, and ask you if you are familiar with that signature?

A. No, I never saw that signature, to my recollection, before.

Q. Are you sure it is not your writing?

A. No, it is not mine.

Q. Did you ever see that writing?

A. Not to my recollection.

Q. At any time?

A. Well, I couldn't tell you at any time. I just don't recognize the writing, that's all. [1062]

Q. Did you ever see a similar signature on any document?

A. Oh, I wouldn't be able to say that. I don't remember of ever seeing anything like it.

Q. All right. I now show you a stock certificate of the Trinidad International Petroleum No. 241

(Testimony of Willard Eugene Warren.)

to Arthur Winslow, and direct your attention to the back of that; did you ever see that writing before?      A. No, not to my recollection.

Q. I show you a certificate No. 236—incidentally, the date of the stock certificate No. 241 is the 25th day of July, 1937, and the one that I am now referring to, 236, made to Arthur Winslow, is the 25th day of July, 1937; did you ever see that signature?      A. No, I don't know it.

Q. Do you know whether Shaeffer or Robbins signed that or not? Just the signature, Mr. Warren, do you know whether they signed the endorsement on the back of the particular certificates?

A. Never to my knowledge.

Q. I direct your attention to Exhibit No. 11, in this case, being the check made payable to Arthur Winslow for \$7,000.00 dated July 30, 1937, and direct your attention to the endorsement thereon; do you recognize that writing?

A. It certainly doesn't look similar to that.

Q. Are you now giving your opinion as a handwriting expert?

A. No, I don't have to be. It doesn't look the same to me. But I saw this signature before, Mr. Rose.      Q. You saw that?

A. Yes. That is either Shaeffer or Robbins wrote their name on there, and I don't know which one it is.

Q. In your presence?

A. No, not in my presence; they took it over to the desk.



(Testimony of Willard Eugene Warren.)

Q. Did you see them write the endorsement between them?

A. I did not see them write the endorsement. I don't even know which one did. They took it around in another room.

Mr. Rose: Does the Court care to inspect these particular certificates, the assignments on the back of them, about which inquiry is made? They haven't been exhibited to your Honor.

The Court: I have looked at nearly everything, but I will again. What is your point, Mr. Rose?

Mr. Rose: My point is, for example, it now seems to be clear that the transaction had with Elizabeth Parsons, culminating in this \$7,000.00 transaction, in July 30, 1937, was had on and around the occasion when Mr. Danziger returned from England, as your Honor will remember, while he [1064] was in New York, and if we advert to the testimony now in the record, elicited by Mr. Mainland in this particular transaction in his examination of Mr. Danziger, it is disclosed Mr. Danziger met a man in New York named Winslow, he so testified. I am developing now that this gentleman and two other persons, whose names he has mentioned respectively, either Shaeffer or Robbins, and in their discussion the name Winslow was used, contrived to acquire stock from the Wake Development Company at that period, and extract—although the Wake Development Company merely got a nominal sum for this stock—let me see how many shares are involved here, some four hundred

(Testimony of Willard Eugene Warren.)

shares of preferential notes and four hundred shares of stock, coupled with the fact that I can't recall at the moment, through some activity on the part of some of these gentlemen they had acquired previously some other shares of stock, and they go out and take \$7,000.00 away from this Parsons woman, and pay Wake Development Company in connection with the acquisition of the stock, without disclosing their purpose or object, a thousand dollars. Now, that is what I wanted to develop.

In other words, they went through the business of acquiring four hundred preferential notes, and four hundred shares of stock, got back their commission—in other words that would be \$1200.00, at three dollars, got back their commission, and then contrived secretly to collect \$7,000.00 from Mrs. Parsons. Now, this has been introduced, [1065] this transaction, your Honor, over violent objection, on the theory that it assertedly supports opposing counsel's notion that the defendants on trial are the perpetrators of this outrage against Mrs. Parsons, from whom they extracted the modest sum of \$7,000.00. Now, in order to rebut these inferences, I am, through the form of cross-examination, attempting to develop here that they—that is, these three—we know who this gentleman is, I am not altogether sure of the identity of the other two, although they have been identified as Robbins and Shaeffer—that that was a private deal of theirs to which we are not privy, and since this has been received over objection as evidence against us, I

(Testimony of Willard Eugene Warren.)

thought it was within the pale of proper cross-examination.

The Court: I haven't said it wasn't.

What is the Government's opinion about this?

Mr. Lucas: I will express myself as having been presented with a beautiful theory, if the Court please, but utterly exploded when we consider the date of the check, July 30, 1937, and find on it the endorsement of the Wake Development Company, put on here in Los Angeles, and I can't see how from that that counsel can say that his client Danziger and Wake Development Company were not privy to whatever may have been going on with regard to the acquisition of the \$7,000.00 check. If it didn't have the Wake stamp on it, it might be put over.

Now, the cancelled stock certificates in the name of [1066] Arthur Winslow, showing cancelled on the 25th day of July, 1937, five days prior to the date of this check, what that will show by way of what certificates were issued on this cancellation I don't know, but the theory of not being privy to the deal is utterly exploded when we look at the Wake Development endorsement on the back of the check.

Mr. Rose: I am glad we have encountered this tremendous explosion, but I call your attention to the direct testimony of this witness, your Honor; this check Exhibit No. 11, for \$7,000.00, comes into the hands of Danziger on his return from England, with a request on the part of this witness to send it on to the Wake Development Company here in

(Testimony of Willard Eugene Warren.)

Los Angeles, and return the proceeds less an amount. I am not certain as to whether the amount that came into the hands of Wake Development Company was a thousand dollars—this witness, if my memory serves me, said about \$1700.00, on his direct examination, of the \$7,000.00 proceeds went back to him and his associates, they split it up between the three of them, Shaeffer and a man he calls Robbins and himself, he doesn't say he split any of it, but Mr. Danziger—it is one of these old transactions, and I haven't had a chance to diagnose it completely because we haven't had the benefit of Mrs. Parsons being here to find out what really happened down there. I don't know what this \$7,000.00 was, whether it was for these particular shares, but we find she does become a stockholder as a result of [1067] this transaction back there in some way or another.

Mr. Lucas: I only want to refresh the Court's mind on one thing. As I recall the testimony of the witness it was of this \$7,000.00 Mr. Danziger received seventeen, eighteen or nineteen hundred dollars of it, and this witness and his two associates——

Mr. Rose: Danziger or Wake Development Company?

Mr. Lucas: ——split the remainder between them. It was fully testified to on direct examination.

Mr. Rose: Now that you are under oath, if that



(Testimony of Willard Eugene Warren.)

is intended as testimony I would like to submit you for cross-examination.

Mr. Lucas: That being under oath doesn't disturb me the slightest, Mr. Rose, and I would be very happy to take the stand at any time you suggest.

Mr. Rose: Let's clear this up while we are at it, your Honor. Your Honor will remember there was a great to do in Mr. Mainland's examination of Mr. Danziger respecting this \$7,000.00 transaction, and why there was not a big file on the thing. [1068] Your Honor will remember that that thing was gone into here. Now, it becomes apparent to me, your Honor—I am not urging your Honor to accept my theory, but I want you to know that I am not just asking questions here because I just want to take up time—it occurs to me in the light of the revealments here before us, namely, that these three go out there to get, he frankly admits, a block of Trinidad stock from the Wake Development Company for as little as they can, to get as much as they can out of Parsons, that there wouldn't be any occasion for very much correspondence in the files of the Wake Company in respect to this Parsons transaction, because that is manifestly, from what we ave here now, a private deal between this witness and two other persons.

Mr. Mainland, you are the expert on this thing. What stock certificates did this Parsons woman have in the beginning? Can you tell us offhand?

(Testimony of Willard Eugene Warren.)

Mr. Mainland: Are you referring to that one transaction?

Mr. Rose: Was there one prior to that?

Mr. Mainland: Yes.

Mr. Rose: What is the date?

Mr. Mainland: The date of the certificate is January 6, 1937.

Mr. Rose: January 6?

Mr. Mainland: Yes. 900 shares and 900 notes.

Q. By Mr. Rose: While we are talking, Mr. Warren, about this Parsons thing, did you cause to be delivered to Mrs. Parsons anything other than a certain number of Trinidad stock certificates for this \$7,000 check?

A. Will you read the question, please?

(The question was read.)

A. No.

Q. By Mr. Rose: How many shares of stock did she get? A. I can't state positively.

Q. What is your best recollection?

A. Well, I would say around—I had always thought she had received six or seven or eight hundred shares of stock, but I can't be positive of that.

Q. Mr. Mainland has called my attention to the fact that a transaction was had with Mrs. Parsons during the month of January of that year, namely, 1937; did you sell her that? A. I think I did.

Q. Then did you sell her another block of stock subsequently?

A. I think after that in '37 I think I got a

(Testimony of Willard Eugene Warren.)

thousand dollars one time and \$4,000 another during 1937.

Q. From her? A. Yes.

Q. Those are checks that you endorsed yourself?

A. Yes, I did. [1070]

Q. Do you remember what name you subscribed to those?

A. Yes, I used the name Edwards when I got those checks from her.

Q. Had any stock ever been in your possession registered in the name of Edwards?

A. There might have been. My memory is vague on it right now.

Q. What initials were used in this Edwards transaction with Mrs. Parsons? A. W. E.

Q. By the way, did you maintain a bank account of any kind? A. Yes, I did.

Q. Where?

A. At the Athens Bank in New York.

Q. City? A. Yes.

Q. Under what name? A. W. E. Edwards.

Q. You had a bank account under that name?

A. Yes, sir.

Q. For what period of time?

A. During 1937. I can't give you the length of time, Mr. Rose.

Q. You used to write checks under that name?

A. Yes, I wrote some checks under that name.

Q. When did you close the account?

A. I don't think I ever closed it.

Q. You had it up to recently under that name?

(Testimony of Willard Eugene Warren.)

A. I don't know how long it lasted. I just drew out almost all the money and never bothered with it any more.

Q. When was that? A. I don't remember.

Q. What is your best recollection?

A. Well, it must have been after '37, because I had it during '37.

Q. Do you have any bank accounts in any other name? A. When?

Q. At any time. A. Oh, yes.

Q. What is that? A. Yes.

Q. During the period of '35 to '40?

A. No, I don't think so.

Q. Well, then, the only bank account that you had, and you did have one during the period 1935 to 1940, was in the name W. E. Edwards?

A. I didn't have it from '35; I had it around 1937.

Q. That was before Mr. Danziger returned from England? A. Yes, I think it was. [1072]

Q. Did you ever have any Trinidad International Petroleum stock in the name of Edwards?

A. Well, I don't remember that, Mr. Rose. You asked me that before. My memory is a little vague on it. I might have.

Q. You may have had?

A. I may have had. I don't remember, though.

Q. In connection with your dealings with Mrs. Parsons, your one thousand, four thousand, and seven thousand dollar transactions were transactions in which you in two instances received under the



(Testimony of Willard Eugene Warren.)

name of W. E. Edwards the one and four thousand dollars, respectively, and under the name of Arthur Winslow the seven thousand dollars; is that correct?

A. Well, I received under the name of Edwards the one thousand, and the four thousand under the name of Edwards, and I engineered the Winslow deal under the name of Winslow, which Mr. Robbins went up and made the sale, ostensibly representing a man named Winslow, who was mythical, if that is what you mean. That is what was done.

Q. And these transactions were had while Mr. Danziger was in England?

A. The one and the four were, yes, sir.

Q. Wasn't this \$7,000 deal all cut up and bundled up and everything before Mr. Danziger even returned to New York? [1073]

A. Oh, no, no; Mr. Danziger wrote me and asked me to cook up a deal with Parsons, that he wanted to get some extra money when he came to New York.

Q. He told you to cook it up?

A. He said, "See if you can't put something over on the Parsons matter."

Q. What did you do with that letter?

A. I think it is in evidence.

Q. And your memory of the language of that is as you have just stated?

A. No, I don't think he said "cook it up"; I think he said, "See if you can't shape up something on the Parsons deal," words to that effect.

Q. Isn't this what really happened: When Mr. Danziger returned to New York and you met him

(Testimony of Willard Eugene Warren.)

on one of those occasions, didn't he tell you that due to this protracted stay and the expenses incurred with his activities in behalf of Trinidad over in Europe, that he was pretty well strapped and needed a little money?

A. I don't remember the exact words but——

Q. Isn't that in substance and effect what he said?

A. He told me he could use money, all right.

Q. Incidentally, he told you he had been over to Paris in connection with the Trinidad matter, didn't he?

A. No. I thought he told me he went down to Italy.

Q. He told you he went to Italy and to Paris, didn't [1074] he?

A. I didn't remember the Paris part of it.

Q. Did he show you any correspondence from some big financial interests in Paris?

A. No, he didn't show me that.

Q. Did he discuss it with you? A. No.

Q. In any event, when he got back to New York in July of '37 he told you that he had this thing all financed, ready to go, didn't he?

A. He told me he was looking forward to some things being consummated now as a result of his two years over there, words to that effect, more than the effect you gave.

Q. Didn't he tell you he had a deal for the equivalent in English money—equivalent to a half

(Testimony of Willard Eugene Warren.)

a million dollars of treasury stock with a 10 per cent commission?

A. No. He told me he met a fellow over there named Spiro and this fellow had given him \$5,000 on a deal to take down some stock, and later this Spiro turned into being a crook, or something, and run away with some money, and he was an absconder in England, he told me that; and as a result of all these negotiations things hadn't worked out well with him at all. That prior to that it looked pretty good, but since this Spiro fellow blew up over there things were pretty tough, but he had hopes that something would result out of his negotiations in England. [1075]

Q. Mr. Warren, didn't he tell you that he had an agreement in England with a firm for marketing of 100,000 shares of Trinidad stock at \$5 per share less 10 per cent commission?

A. He wrote me a letter while he was in England to some effect like that. I had a letter that he had closed some of that, but I didn't know whether it was bona fide or not. I think somewhere I had the letter, if I am not mistaken.

Q. When you received that letter and when he returned did you ask him how that deal was progressing?

A. No, I don't remember asking him about that.

Q. You didn't discuss that at all?

A. No, I never put much stock in it, frankly.

Q. You didn't? A. No, I didn't.

Q. Have you told us, so far as your memory

(Testimony of Willard Eugene Warren.)

serves you, everything that was said between you and Mr. Danziger in New York upon his return in 1937?

A. Well, he told me that he met a man over there——

Q. Spiro, again?

A. No, I think another fellow by the name of Nate Calvin, who I knew here in the States, and we talked about him somewhat. He said Calvin had started to go into a deal with him, but that had blown up. And outside of this Spiro thing there wasn't very much discussed except I think we [1076] talked a little bit about the expense that I had been put to in the Chicago matter, in which I had been indicted, and he asked me how he was concerned in the deal, and I told him.

Q. Yes?

A. I don't know whether I should mention that or not. Do you want me to talk about that, Mr. Rose?

Q. I want you to talk about any discussion he had with you in connection with the sale or no sale of Trinidad stock. That is our problem here.

A. I see. All right. That was about all, just about the Trinidad stock incidents was in Chicago where I had been arrested, that was a great deal of our conversation.

Q. Mr. Warren, that is fine, but I am asking you did he discuss with you whether you were to make any more sales on the Trinidad stock or not?



(Testimony of Willard Eugene Warren.)

A. Oh, yes. He wanted me to make all the sales I could. He was very——

Q. He told you that?

A. Yes, he was very desirous of getting in all the money he could. In fact, he told me that he would help me in any way he could and co-operate in any manner, shape or form.

Q. That is what he told you in New York?

A. Yes, he did, yes, sir.

Q. What did you say? [1077]

A. I told him it would be very helpful for me if he did, because I had gotten myself in a bad way and I wanted to get out of the hole, I had lost a good deal of money as a result of the Chicago thing.

Q. You testified in your direct examination that in one of these conversations with Mr. Danziger you told him that you were no longer going to sell any of this stock?

A. I don't quite follow you, Mr. Rose.

Q. Did you have such discussion with him?

A. Will you read that question again, please, Reporter?

(The following question was read: "You testified in your direct examination that in one of these conversations with Mr. Danziger you told him that you were no longer going to sell any of this stock?")

The Witness: If you can refresh my memory when I said that, Mr. Rose? I don't remember the incidents right now?

Q. By Mr. Rose: Did you ever have a discus-

(Testimony of Willard Eugene Warren.)

sion with him at which in substance and effect it was stated that you were no longer going to sell Trinidad stock?

A. Oh, you may refer to the matter, the conversation I had with him about that I couldn't go up and sell Mrs. Parsons any more because I didn't have any more stories to tell her, I would sell her any more, if that is what you mean. I don't remember the other incidents, Mr. Rose. [1078] If you will refresh my mind I will be glad to answer.

Q. By Mr. Rose: I am particularly interested in this transaction that you have related in your direct testimony, the one with Mike Burns. Do you remember when that took place?

A. Well, that took place in 1939, sometime, to the best of my memory.

Q. When in 1939?

A. I think the early part of 1939.

Q. Where did it take place?

A. In Peekskill, New York.

Q. In what? A. Peekskill, I think.

Q. Tell us about that transaction.

A. Well, Mr. Burns had a grocery store there, and I called on him and told him that I was interested in buying his notes of the Trinidad International Petroleum Company, and he said to me, "Well, I don't think I have any notes in that company; you must have the wrong person."

I said, "No," I said, "tell me,—maybe you have Great Eastern Natural Gas stock." And he said, yes, he had some of that. I said, "Didn't you know

(Testimony of Willard Eugene Warren.)

you had a right to exchange it some years back?" And he said, "Well, he thought he remembered something to that effect but he wasn't sure."

Then I said, "Well, the notes are worth about \$4.80 [1079] a piece for each unit of notes, that is equivalent to the exchange, foreign exchange rate on a pound, and I am buying them for some Canadian interests, if you would be interested in selling them I would like to buy them, but since you don't have any there isn't anything I can do about it."

He said, "I have got some of that Great Eastern stock."

And I asked him how much it was, and I think he said 100 shares.

He said, "What do you think I can do about it?" And we talked the matter over, and I think he brought the certificate out and showed it to me and asked me what he should do with it, and we discussed the matter, and he seemed to be so anxious to make the exchange that I told him he better write in to Los Angeles. And I am not positive, but refreshing my memory on the matter, I believe that there was some kind of a deal worked up whereby he was going to make a direct request that they send him the stock, and then I think it was agreed that he would send the stock along and a check, if I am not mistaken. I am not positive about that. But at any rate, he did make the inquiry to Los Angeles, because later I got the correspondence from them and the deal was consum-

(Testimony of Willard Eugene Warren.)

mated, and I got my hundred dollars less the collection charges on the money.

That is about the sum and substance of the Michael Burns deal, Mr. Rose.

Q. Haven't you omitted any part of it? [1080]

A. I might have. I might have omitted something, but I am doing the best I can.

Q. Was Mike Burns one of the Great Eastern list? A. Yes, he was.

Q. If I were to ask you to relate your transactions with the various persons that you have related on direct examination, in your opinion you would be able to relate them in the same manner?

A. Well, I don't think I could do it exactly the same, because no one can use exactly the same language in describing a thing, probably; but I will do the best I can, Mr. Rose.

Q. You believe you could repeat it, though, with very little variation?

A. Well, there might be some variation. I wouldn't say I have such a memory as that.

Mr. Rose: May I have Exhibit 24, please?

Q. By Mr. Rose: Did you tell Dr. Hazelton what to write? Did you have anything to do with the dictation of any letters to the Wake Company?

A. Which ones do you mean?

Q. Any that he wrote.

A. Yes, I might have told him some.

Q. Did you assist in the writing of any of these letters? A. Not actually, no. [1081]



(Testimony of Willard Eugene Warren.)

Q. Were you present when this letter of June 20, 1938, which is part of Exhibit 24, was composed?

A. I think I was. I am not certain, though; I think I was.

Q. Is any part of that letter in your handwriting?

A. No.

Q. Are you sure?

A. No, I don't think so.

Q. But to the best of your recollection you were present when this was written?

A. Well, I might have been. I am a little hazy on it, but I might have been present.

Q. I call your attention to this letter on the stationery of Dr. Hazelton dated June 20, 1938, wherein reference is had to A. L. Roberts, and call your attention to the fact that A. L. Roberts, singularly of all the material contained in that letter, is printed as distinguished from the usual script of the remainder of the letter; did you discuss the printing of that name?

A. No, I didn't.

Q. Can you explain why it was printed instead of written like the rest of it?

A. Only unless the doctor wanted to make sure you got the correct spelling of the name.

Q. We were going into the subject of certain names that you resorted to at different periods; I am not [1082] canvassing that subject in too much detail. During the year '35, to '36, you used the name Carter and Carmen, is that right?

A. I never used Carter in any sales; I used Carmen in sales.

(Testimony of Willard Eugene Warren.)

Q. That was the only name used during the years '35 and '36?

A. Well, with the exception of—I might have deviated to the name of Cameron once or twice.

Q. When did you make that deviation?

A. Well, I think I used the name Cameron in a Chicago transaction, if I am not mistaken, Mr. Rose.

Q. That was in '36?

A. Yes. Yes, that was the early part of '36.

Q. Did you use any other name during that year?

A. Yes, I think I used the name Calvert, now that I think of it.

Q. You used the name Calvert in '36?

A. Yes, I think I used that name.

Q. Let's clear up any that are missing. What other name did you use in '36?

A. That is all I can remember now.

Q. In '35 it is Carter and Carmen; and '36 Carmen, Carter, and Calvert? A. Cameron.

Q. When did you use that name? [1083]

A. I just told you Cameron just a moment ago. Cameron and Calvert is the only ones besides Carmen.

Q. In '36? A. Yes.

Q. When did you use, for the first time, the name Cameron?

A. I used it on some call in Chicago, and I just can't place the call. I think it was on Mrs. Cowan.

Q. Now, to the best of your recollection have

(Testimony of Willard Eugene Warren.)

you told us all of the names you used in '35 and '36?

A. Well, I have done the best I can.

Q. Well, you don't remember of any other?

A. Not offhand.

Q. All right. Tell us all the names that you used in '37.

A. Well, I think I used the name of Williams and Edwards, and I might have used the name Wilson.

Q. Any others?

A. I think in the latter of '36 and '37 I used the name Dawson.

Q. Now, to the best of your knowledge have you told us all the names you used in that period?

A. To the best of my knowledge, Mr. Rose.

Q. What names did you use in '38?

A. Well, I used the name Roberts in '38 with the Hazelton deal.

Q. We know about that. [1084]

A. Yes.

Q. Any others?

A. I might have used the name Williams on some calls; and I might have used the name Dawson.

Q. Any others?

A. And I did use the name Baker somewhere along in there.

Q. Go on.

A. I can't think of any more right now.

Q. Let's get to '39 as rapidly as we can. What names were used in that year?

A. I think substantially the same ones. There wasn't very many additions to that list.

(Testimony of Willard Eugene Warren.)

Q. What names did you use in '40?

A. I used the name George Carlton in '40.

Q. Any others?

A. No, I think I used that name pretty well right in there around '39 and '40. I think I used Carlton, George Carlton, right in that section there, too.

Mr. Rose: Your Honor, frankly I am a little tired today, and your Honor has indicated a disposition to recess a little earlier than usual; I didn't want to impose upon your Honor to have him go into detail and repeat a great many transactions, which I had a disposition to do in the first place, and in that manner consume some time; I changed my mind about it and thought I would cover it with an omnibus [1085] question; I would like an opportunity before I turn him over for redirect to glance at some of the exhibits with the idea that it may call to my mind some particular thing before I release him from cross.

The Court: Do you think you are about through?

Mr. Rose: I won't take more than fifteen minutes with him under any circumstances.

The Court: You can take longer than that.

Mr. Rose: I know your Honor has indicated I can take all the time I want.

The Court: That being the situation, we will adjourn this case until 2:00 Monday afternoon.

Mr. Lucas: Very well, your Honor.

(Whereupon, at 4:00 o'clock p. m., January 26, 1945, an adjournment was taken until Monday, January 29, 1945, at 2:00 o'clock p. m.) [1086]



Los Angeles, California,

Monday, January 29, 1945. 2:00 P. M.

(Other court matters.)

The Clerk: 15173, United States v. Danziger,  
et al.

Mr. Lucas: Ready.

WILLARD EUGENE WARREN,

(WARREN C. CARTER),

resumed the stand as a witness on behalf of the  
Government and, having been previously duly  
sworn, testified further as follows:

Mr. Rose: Shall I proceed, your Honor?

The Court: Yes, sir.

Cross Examination—(Continued)

By Mr. Rose:

Q. In connection with your discussion, Mr.  
Warren, with Dube, and this Great Eastern trans-  
action resulting in an escrow in Wilmington, and  
with DeHart, wasn't an arrangement made that  
you would have a crew of salesmen?

A. No. That was already arranged before we  
did any business with Dube.

Q. That is, you arranged to have a crew of  
salesmen? A. Mr. Danziger and I together.

Q. Why don't you answer my question?

A. I am trying to.

(Testimony of Willard Eugene Warren.)

Q. Mr. Danziger didn't tell you who to hire, did he?

A. Not necessarily, no.

Q. I mean he didn't, did he? Did he tell you, necessarily, or unnecessarily, to hire any salesman?

A. No.

Q. But you stated to him that you intended to hire a number of salesmen, didn't you?

A. That's right.

Q. And you furnished them with certain equipment, did you, that is, material?

A. Material I received from him.

Q. Incidentally, in the course of your business of communicating with the Wake Development Company you had in your possession or under your control a quantity of this type of envelope, didn't you (indicating)?

A. No, I didn't have those in the very beginning. I haven't seen those except—as a matter of fact, I don't think I ever saw this envelope before.

Q. Have you seen one like it?

A. No, not one like it.

Q. You told us a moment ago that you didn't have them in the beginning. Did you have printed envelopes addressed to the Wake Development Company?

A. No, we didn't. I have seen that—I have seen an envelope similar to that in 1939 or somewhere around there, during the course of correspondence, but not with any return address on the top of it; without any blank to put in your name. I saw another type envelope.

(Testimony of Willard Eugene Warren.)

Q. Do you remember a picture of an oil tanker, the SS. J. M. Danziger? [1089]

A. I remember something about it. I vaguely remember a picture somewhere.

Q. In the course of your testimony on direct you have indicated that you received a paper or papers, that is, in the form of a newspaper, from England, did you?      A. That's right.

Q. Where is it?

A. I don't know. I haven't it.

Q. When did you last see it?

A. I can't recollect now.

Q. What is your best recollection?

A. Well, my best recollection would be the later part of 1936.

Q. What was the name of this purported newspaper?

A. It was the London financial paper of some sort. I think it was the London Financial Times. I don't remember the exact name.

Q. Would you know the name if you heard it?

A. I might.

Q. Was it the Petroleum Times?

A. It seems to me I received some excerpts from the Petroleum Times cut out, but that wasn't the paper.

Q. Was it the Petroleum World?      A. No.

Q. In fact, before Mr. Danziger left for Europe, in the several conferences which he had in which you participated, [1090] he had displayed to you a number of publications from abroad, and also

(Testimony of Willard Eugene Warren.)

the New York Times, touching on the oil situation and prospects both in Trinidad and New Mexico, isn't that a fact?

A. Well, he showed me quite a few papers. I wouldn't remember exactly the names of them. I did see quite a few papers, yes.

Q. Do you remember this picture?

A. No, I don't remember that picture, not like this; I have seen this picture somewhere, but I think it was in a brochure, if I am not mistaken, Mr. Rose.

Q. Did you see it in your preliminary discussion with Mr. Danziger?

A. I saw that picture somewhere.

Q. Did he discuss with you the subject of tankers?

A. No, no, I don't remember the discussion about tankers except it was a picture with his name on it, on the front of the ship.

Q. And this, to your recollection, is a facsimile of it?

A. Well, it looked something like that, I thought.

Mr. Rose: I offer this next in order.

Mr. Lucas: In evidence or for identification?

Mr. Rose: In evidence.

Mr. Lucas: To which we object, if the Court please, on the ground it is incompetent, irrelevant, and immaterial. [1091] It wouldn't prove or disprove a single issue in this case. It is a picture of a ship with a man's name on it.

Mr. Rose: I don't think it is incumbent upon



(Testimony of Willard Eugene Warren.)

me to argue as each bit of evidence goes in here, your Honor. I expect to connect that up in connection with the discussion.

The Court: It is admitted.

The Clerk: Defendants' P.

(The document referred to was marked as Defendants' Exhibit P, and was received in evidence.)

Q. By Mr. Rose: I call your attention to a photostat of a document with a printed appellation on it "The Petroleum World Oil News of the Empire"; isn't this one of the documents shown to you by Mr. Danziger?

A. I don't remember this one, Mr. Rose.

Q. Will you say you did not see it?

A. To the best of my recollection I never remember seeing this before.

Q. I show you "The Petroleum Times Trinidad's Petroleum Industry"; did you see that?

A. I don't remember this one either, Mr. Rose.

Q. Would you say you did not see it?

A. No, I wouldn't say that.

Q. I show you another one, "The Petroleum Times Trinidad's Petroleum Industry Export Statistics for Eight Months of 1932," in connection with Trinidad production; [1092] did you see that?

A. This appears to be the same as that, doesn't it, Mr. Rose.

Q. Yes.                      A. I don't remember it.

Q. You are unable to tell us whether these were displayed to you or not?

(Testimony of Willard Eugene Warren.)

A. Well, I don't remember the first one at all. The others might have been displayed to me, but I don't remember.

Q. How about this group of documents here with the appellation in the upper left-hand corner "New Oil Pool Opened in New Mexico," did you see these?      A. Shall I look inside?

Q. Certainly, I am not trying to keep a secret from you. I want to know whether you saw them.

A. I can't say that I did, and I can't say that I didn't.

Mr. Rose: I ask, your Honor, that this group to which reference has been had be marked at this time for identification as one exhibit.

The Clerk: Exhibit Q, Defendants' Exhibit Q, for identification.

(The documents referred to were marked Defendants' Exhibit Q, for identification.)

Q. By Mr. Rose: In your preliminary discussion were [1093] you shown a prospectus of the Trinidad International Petroleum, Ltd.?

A. No, I was not.

Q. Are you sure of that?      A. Yes, I am.

Q. Did you receive in the course of your discussions with Mr. Danziger prior to his leaving for Europe a sort of brochure with the title on it, "Information on Trinidad and Trinidad International Petroleum, Ltd., Properties"?

A. Well, if I see it—

Mr. Rose: I have to exhibit it to counsel first. I will show it to you in a moment.

(Testimony of Willard Eugene Warren.)

The Witness: No, I don't remember seeing this particular brochure, Mr. Rose.

Q. Did you see one similar to it?

A. Well, I have saw some papers, but I don't remember seeing this particular one. I remember that because it tells about the royalties in the back, which I didn't know anything about at any time.

Mr. Rose: I ask that this particular exhibit bearing the inscription on the front page "Information on Trinidad and Trinidad International Petroleum, Ltd., Properties" be marked for identification.

The Clerk: R.

The Court: It may be marked.

(The document referred to was marked Defendants' Exhibit R, for identification.)

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Q. By Mr. Rose: Had you during the month of June, 1937 approached Mrs. Parsons in connection with some of the Trinidad stock?

A. There was a transaction, there was a couple of them in the early part of 1937.

Q. You had personally been out there, had you?

A. Yes, I was out there once.

Q. And that was while Mr. Danziger was in Europe?

A. Yes, that's right.

Q. And you had worked out a deal with her before he even arrived, that is more than a month before he arrived?

A. No, no. The time I visited was very early in the year.

Q. What part of the year?

(Testimony of Willard Eugene Warren.)

A. 1937, to the best of my recollection.

Q. What part of 1937?

A. Well, I think it was around in February, somewhere around in there, or March. I got a thousand dollar check at that time, I remember, payable to Edwards.

Q. Well, hadn't you——

A. There was another transaction made for \$4,000 about a month or two after that.

Q. When was that?

A. A couple of months after that, that might have been in April or May, around in there.

Q. Are you sure it wasn't in June? [1095]

A. Well, it might have been, but I can't definitely remember the date there, but it was somewhere along in there; I didn't go that time to see her, though.

Q. Well, did you tell Mrs. Parsons to transfer some shares of her Trinidad stock to you?

A. Well, there might have been some sort of an arrangement like that——

Q. We are not talking of mere possibility; I am asking you if you have any memory of it.

A. I don't remember any transfers.

Q. Well, you remember getting a thousand dollars made payable to Edwards and \$4,000, you remember that.

A. Yes, I remember those checks.

Q. You remember discussing with her the transferring of certain Trinidad shares to your name under the assumed name of Edwards?



(Testimony of Willard Eugene Warren.)

A. There might have been some conversation about it, but I don't think anything was done.

Q. You don't?

A. Well, I don't remember it.

Q. Well, I call your attention to Exhibit 76 in evidence, which is a letter bearing the date June 16, 1937, bearing the printed appellation "Mrs. Frank B. Parsons" and her address, addressed "Trinidad International Petroleum, Ltd. Gentlemen: At the request of W. E. Edwards I am forwarding seven shares of Trinidad leaseings and seven [1096] shares holding certificates. Mr. Edwards desires you to change them and make them in my name Elizabeth T. Parsons and forward to above address," and this is her address in Pottsville. Did you induce her to sign that?

A. Well, this is a little different than the question you asked me just now.

Q. Just a moment. Don't you understand the question I just asked you?

A. I didn't understand it the way you placed it now.

Mr. Rose: Read the question.

The Witness: You asked me——

Mr. Rose: Just a minute, Mr. Warren. Read the question to the witness.

(The question was read.)

The Witness: Will you read the question that preceded that, this statement, that is, the question you asked me a minute ago?

(Testimony of Willard Eugene Warren.)

Q. By Mr. Rose: Mr. Warren, I am asking you——

A. If you are asking me another question now——

Q. Mr. Warren, I am asking you to answer the pending question that the reporter just read. If you don't understand it, indicate it, and I will have him read it to you.

A. This last question you asked me is, I assume, whether or not I knew this letter. I knew something to this effect was in existence, and I knew there was some stock that [1097] I had in the name of Edwards or at least I thought I did remember some small amount of stock in the name of Edwards being transferred into Mrs. Parsons' name. But I never remember Mrs. Parsons transferring any into my name.

Q. By Mr. Rose: Well, I will ask you again to read this letter, this is Government's Exhibit No. 76, and I will ask you again did you induce Mrs. Parsons to transmit this particular document by reason of the discussion had with her respecting the proposed transactiton set forth in that document? A. Yes, I think I did.

Q. Then, you were causing to be transferred to her seven certificates and seven notes that stood in the name of Edwards and you told her you were going to transfer it to her.

A. Evidently.

Q. Well, that is a fact, isn't it?

A. Well, it seems so to me from that evidence.

(Testimony of Willard Eugene Warren.)

Q. Otherwise you have no memory of it?

A. I don't remember the seven shares, certificates, but there might have been.

Q. Well, is that when you got \$4,000 from her and were transferring——

A. No.

Q. ——seven shares?

A. No, it didn't pertain to the \$4,000. [1098]

Q. You were giving her a gift of seven and seven shares as set forth in this letter, is that right?

A. It is my opinion that she had that certificate quite some time previously and had never transferred it, and I told her merely to send it in and get it transferred into her name.

Q. Do you have any experience in the oil industry or business at all?

A. I can't say that I have.

Q. Do you profess to know anything about oil bearing properties or the business of developing it?

A. I might have made those statements.

Q. No. I say did you at any time profess to have any knowledge to that effect?

A. I might have made those statements?

Q. Did you ever discuss with any one making a trip to Trinidad, British West Indies?

A. Oh, yes.

Q. With whom?           A. Dr. Hazelton.

Q. Well, other than Dr. Hazelton did you ever discuss it with anybody else?

A. I can't remember now. I might have.

Q. What were you assertedly going to do when you got to Trinidad, British West Indies?

(Testimony of Willard Eugene Warren.)

A. Well, I was going to look into the property, and see [1099] what the situation was pertaining to the holdings Dr. Hazelton had, and others.

Q. That is what you told him?

A. Yes. I was supposed to have a small interest in his holdings. I was going to look out for our mutual interests.

Q. That is what you told him?

A. That's right.

Q. And you were going to the British West Indies to look into the property?

A. That's right.

Q. You never discussed with Mr. Danziger making a trip to British West Indies, did you?

A. No, because I didn't intend——

Q. Don't tell us why. The answer is no, isn't it?

A. I wrote Mr. Danziger——

Q. I asked you, did you ever discuss with him making a trip to British West Indies?

A. No, not in person.

Q. Did you ever write him a letter that you proposed to go to Trinidad?

A. I didn't write him that kind of a letter.

Q. All right. With whom had you been discussing the subject of some syndicate?

A. Dr. Hazelton, I remember discussing something about a syndicate with him. [1100]

Q. As a matter of fact, this seven shares that is mentioned in Government's Exhibit 76, that is the letter from Mrs. Parsons addressed to Trinidad, is seven hundred, isn't it?



(Testimony of Willard Eugene Warren.)

A. It might have been.

Q. Is that your recollection?

A. It sounds more logical than seven.

Q. By the way, where did you reside in the month of March, 1940?

A. I can't state right offhand. I don't remember. I was moving a lot so I wouldn't know that exact date, at that particular time.

Q. Did you have an office at any particular time in the month of March?      A. No.

Q. At any time?      A. No.

Q. Did you have an occasion to have an address in New York where you could receive some mail in New York?      A. Yes.

Q. Where was that?

A. Mr. Palmer's office.

Q. And Mr. Palmer was the head of the Great Eastern Gas Company?

A. He used to be, previously was.

Q. He was, wasn't he? [1101]

A. At one time he was, yes.

Q. Did that company disband?      A. Yes.

Q. When?

A. I don't remember when they dissolved.

Q. Wasn't it after 1940?

A. Might have been.

Q. Where was his office?

A. He was in 1472 Broadway, 42nd Street and Seventh Avenue, Broadway, New York.

Q. That is the old Longacre Building, isn't it?

A. That's right.

(Testimony of Willard Eugene Warren.)

Q. Under what names did Mr. Palmer know you?

A. Well, principally under the name of Carter.

Q. Did he know you under any other name than Carter?

A. Yes, he knew me under the name of Carmen.

Q. Anything else?           A. Roberts.

Q. When did you tell him your name was Roberts?

A. I told him that just previously to receiving a letter from Mr. Hazelton. I told him to look out for a letter addressed to Mr. Roberts in care of his office, and to give it to me when it comes.

Q. And that was when?

A. That was in 1940 sometime, Mr. Rose.

Q. Are you sure it wasn't in '39? [1102]

A. No, I don't think so.

Q. I direct your attention now especially to Exhibit 34, that part of it which is an envelope attached to the back of it, and I will ask you is that handwriting on that, "A. L. Roberts" yours?

A. That is not mine.

Q. You didn't write that?

A. I didn't write any of that.

Q. Is any of it in your handwriting?

A. No, sir.

Q. Do you know the handwriting?

A. No, I don't.

Q. In your testimony on direct here, you stated when you first visited Dr. Hazelton in '38 you discussed with him at that time the stock he had in

(Testimony of Willard Eugene Warren.)

Commercial Research, that is the first thing you discussed with him, wasn't it?

A. I don't remember discussing Commercial Research with him.

Q. You don't?

A. No. There was another stock similar in name, but it wasn't Commercial Research.

Q. What was it?

A. Communications Research.

Q. You did discuss that stock with him when you first visited him?

A. I might have talked to him about it, but it wasn't [1103] the cause of my visit, however.

Q. What did you tell him about it?

A. I told him that I thought that the stock was a junior issue in the television field, and had good speculative possibilities as such, and possibly it would be a good idea to hold on to it to find out whether it not it wouldn't have good appreciation in the future, and so forth.

Q. That was in 1938?                      A. Yes, I think so.

Q. Did you ever discuss that particular security with him at any later date?

A. Yes, I think I did talk to him about it in 1940 again.

Q. What did you tell him about it then?

A. Well, I told him when we discussed the matter nothing had happened to it, and I think I told him that he could trade it in to the Trinidad Company and get some stock for it.

Q. You told him to trade it in to the Trinidad?

(Testimony of Willard Eugene Warren.)

A. To the Wake Development Company, yes.

Q. Is that what you told him to do?

A. Told him to send it to me care of the Wake Development Company, and I told him I would make him an allowance of stock.

Q. You told him to send it to you?

A. Care of the Wake Development Company, yes, I did. [1104]

Q. Did you receive that 100 shares of Communications Research stock?      A. I think I did.

Q. Where were you when you received it?

A. I think Mr. Danziger sent that to my——

Q. I didn't ask you anything of the kind, Mr. Warren.

Mr. Rose: Will you read the question to the witness, please?

(The question was read.)

The Witness: I received it at my mother's house, by mail, to the best of my recollection.

Q. By Mr. Rose: Have you still got it?

A. I imagine; somewhere, but I don't know where it is.

Q. You haven't disposed of it?      A. No.

Q. You have it but you don't know where?

A. No, not offhand I don't.

Mr. Rose: I think, your Honor, that is all that occurs to me at the particular moment.

Mr. Lucas: Just a couple of questions on re-direct.



(Testimony of Willard Eugene Warren.)

Redirect Examination

By Mr. Lucas:

Q. What did you write to Mr. Danziger about this mythical trip of yours to the island of Trinidad?

Mr. Rose: I object to it on the ground it is leading and suggestive, not proper redirect, and not the best [1105] evidence.

The Court: Is there any document on that in the case now?

Mr. Lucas: Counsel just used Government's Exhibit 34 in interrogating this witness about whether he ever made any statement to any one about going to the island of Trinidad, and the witness answered that he wrote Mr. Danziger, and counsel didn't pursue it any further. I just wanted to go into it briefly.

Mr. Rose: He has made a number of these voluntary statements, your Honor, that weren't responsive to any question. I didn't know that his ipse dixit opens up the door for him to set up some additional straw men. He said he only made the statement to Dr. Hazelton, and that was enough.

The Court: We will pass it up.

Q. By Mr. Lucas: The other day, Mr. Carter, on cross examination by Mr. Rose on this \$7,000 check deal with Mrs. Parsons, you made the statement, "We all planned it;" I wasn't certain who all you included in that expression "We all planned it." Did you mean thereby to state that Mr. Danziger was in on the planning of the selling of this stock to Mrs. Parsons? A. He certainly was.

(Testimony of Willard Eugene Warren.)

Q. I show you, Mr. Carter, what has heretofore been introduced in evidence as Government's Exhibit 108, and thereafter withdrawn with consent of the Court, and I ask [1106] you to examine that and tell me if you received it and from whom.

A. What was the question, please?

The Court: Did you receive it?

The Witness: Yes, I did.

Q. By Mr. Lucas: From whom?

A. Mr. Danziger.

Mr. Lucas: I offer it in evidence as Government's Exhibit 108, being the number it now bears, if the Court please.

Mr. Rose: Preliminary to passing on that exhibit, may I ask a couple of preliminary questions?

Q. By Mr. Rose: Where were you when you assertedly received this? You don't have to look at that to tell us the answer, do you? Where were you?

A. I was in New York. I don't know where I was living at the time.

Q. Did you receive this in the mail or was it handed to you?

A. I received it in the mail.

Q. Where were you?

A. To tell you the truth, I don't remember exactly.

Q. As a matter of fact, you have no memory of receiving this at all, have you?

A. Yes, I do remember it very distinctly.

Q. You do? [1107]            A. Yes, sir.

(Testimony of Willard Eugene Warren.)

Q. You remember receiving it in the mail?

A. Yes.

Q. Where were you residing at that time?

A. What was the date?

Q. July 12th, 1937.

A. I believe I lived at the Imperial Hotel then, Mr. Rose.

Q. Where was that?

A. 32nd Street and Broadway.

Q. How long had you been living there?

A. I lived there quite a while, four or five months, at various times. However, I didn't receive that letter there.

Q. You did not?

A. No, not at that address. I never received any mail from Mr. Danziger at that address.

Q. You mean at the Hotel Imperial?

A. That's right. I got a couple of telegrams or wired money orders there, but I didn't receive any letters there. I had another mailing address.

Q. What is it?

A. My mother, Mrs. Hattie Warren, 178 Willis Avenue, New York, Bronx, New York.

Q. All right. Now, let's get this clear, and then I am finished with this particular subject. You did not [1108] receive any mail at the Hotel Imperial from Mr. Danziger?

A. Not at the Hotel Imperial. I received some wires there, that's all.

Q. But no mail?            A. No.

Q. You are positive of that?

(Testimony of Willard Eugene Warren.)

A. I don't remember any. I am pretty sure there wasn't any.

Mr. Rose: All right.

The Clerk: It is already in, 108.

Mr. Rose: Your Honor has already examined that before. I withdrew it on the question of signature after letting it go in first without objection. They haven't clarified the signature situation, but I take it there is sufficient foundation from the oral testimony of this witness pertaining to that subject.

The Court: It is admitted.

Q. By Mr. Lucas: I show you, Mr. Carter, after having first exhibited to counsel, an envelope addressed, "M. B. Bishop, Auditor, Post Office Box 463, Grand Central Annex, Post Office, New York City"—on the outside in the lower lefthand corner, "Re: Wake Development Company," clipped to the envelope a letter on the letterhead of Wake Development Company, 408 South Spring Street, Los Angeles, California, headed at the top, "New York City, June , 1935," and ask you if you have seen the letter or a facsimile thereof, and [1109] the envelope or a facsimile thereof.

A. Yes, I have seen this before.

Q. What is it?

Mr. Rose: The instrument speaks for itself, if it is competent.

Q. When was it used, if ever?

A. It was used——

Mr. Rose: Just a minute. I object to it on the



(Testimony of Willard Eugene Warren.)

ground that the instrument speaks for itself. It calls for an opinion and conclusion of the witness.

The Court: The question is when was it used?

The Witness: It was used in July when we started our campaign on Great Eastern Natural stockholders.

Q. By Mr. Lucas: June of what year?

A. 1935.

Q. I direct your attention to the letter and the signature thereon; in whose handwriting is that?

A. I don't think that is handwriting, I think it is a facsimile; I think it is multigraph job.

Q. In whose handwriting is the original of which that is a multigraph copy?

Mr. Rose: I object to that as calling for a conclusion and opinion of the witness.

The Court: He may answer.

A. Well, in my opinion this is Mr. Danziger's signature of "M. B. Bishop." [1110]

Q. By Mr. Lucas: Was Mr. Danziger using the name "M. B. Bishop"?

Mr. Rose: Just a moment. I move that be stricken on the ground he is not qualified.

The Court: Stricken.

Q. By Mr. Lucas: Was Mr. Danziger using the name M. B. Bishop?

The Court: Stricken; the whole thing is stricken.

Mr. Rose: I object to it as leading and suggestive, not proper redirect.

The Court: Now, listen, the whole thing is stricken.

(Testimony of Willard Eugene Warren.)

Mr. Lucas: You are now striking that reference to the signature?

The Court: I am not going to let him in as a handwriting expert.

Mr. Lucas: You are not striking out the testimony concerning the use of the mailing of it?

The Court: That is all right.

Q. By Mr. Lucas: I show you a letter on the letterhead of D. B. Howe & Company, 32 Broadway, New York, dated September 20, 1934, addressed to Mr. J. M. Danziger, Wake Development Company, 408 South Spring Street, Los Angeles, California, and signed "Cordially yours, D. B. Howe & Company, by" and there follows a word or initials, "A. L."; I will ask you if you have seen that before.

Mr. Rose: You mean this particular letter?

Mr. Lucas: Yes, that particular one.

The Witness: I have seen this letter somewhere, but I can't remember where.

Q. By Mr. Lucas: Calling your attention to the handwriting at the bottom thereof in the red pencil, apparently, does that aid you in your recollection of the matter?

Mr. Rose: I object to that as leading and suggestive, and calling for him to be a handwriting expert again.

The Court: He may answer.

A. To the best of my recollection I had this letter sent to me sometime during my correspondence with the Wake Development Company; but just

(Testimony of Willard Eugene Warren.)

when and where and at what time it is hard for me to remember now.

Q. By Mr. Lucas: What is your best recollection as to where you received it, from whom you received it?

A. I think I received it from the Wake Development Company.

Mr. Rose: I move that be stricken as pure opinion and conjecture.

The Court: Stricken.

Q. By Mr. Lucas: I show you now a letter on the letterhead of Trinidad International Petroleum, Ltd., with the caption at the top, "Information for company representatives relating to offer of Wake Development Company, of shares and notes of Trinidad International Petroleum, Limited," and ask you if you have seen that document before.

A. Yes, I have seen this before.

Q. When did you come into possession of that or a facsimile thereof?

A. This is part of the literature that Mr. Danziger drew up for sales work in New York when he was there, part of the kit we gave the salesman.

Q. Now, I direct your attention to——

Mr. Rose: The record will never indicate what you are talking about. Do you intend to offer that?

Mr. Lucas: Yes, I am going to offer these three as one exhibit if I can get the third one in, Mr. Rose, and identify it.

Q. By Mr. Lucas: I direct your attention to

(Testimony of Willard Eugene Warren.)

what is on the letterhead of the Securities and Exchange Commission, Washington, dated September 13, 1934, there is no address at the top of the letter, the salutation is, "Gentlemen"; I will ask you to look at that and ask you if you have ever seen that before or a facsimile thereof.

A. Yes, I have seen facsimiles of this. We had a number of them which comprised a part of our sales kit furnished us by Mr. Danziger when we started the sale of the stock.

Q. Now, directing your attention, further, to the document; as it was handed out to the salesmen for use by them, was it in the same form that it is now?      A. I think it was, Mr. Lucas. [1113]

Mr. Rose: I move that be stricken as mere conjecture.

The Witness: It was, it was similar to this.

Mr. Lucas: I now offer these three documents, namely, the M. B. Bishop envelope, accompanied by the Wake Development Company letter that the witness first identified; the Securities and Exchange Commission business which he last identified; and the Trinidad International Petroleum information for company representatives—and ask that they be marked as one exhibit and received in evidence as Government's Exhibit next in order.

Mr. Rose: As to this particular document bearing an envelope with the post-mark from Reading, Pennsylvania, with no date on the mimeographed material therein, I object to it on the ground that no proper foundation has been laid; it is irrelevant



(Testimony of Willard Eugene Warren.)

and immaterial to any of the issues in this case; that said letter or mimeographed letter, ostensibly, is addressed to the stockholders of South American Oil Fields, Inc., or all Americas Petroleum Corporation, and doesn't pertain or relate to the issues we have here. It is, additionally, remote; it is a different transaction and has nothing to do with the matters set forth here.

The Court: I will exclude that.

Mr. Rose: As to this document (indicating), the witness identified it was something that came into his possession from Mr. Danziger, and we have no objection to its being received in evidence in any respect. On the other hand, [1114] this thing here—I would like your Honor to examine it. As to this, I certainly object to it on the ground it is manifestly not a document addressed to any person; there is no foundation laid; it is dated September 13, 1934, and the thing on its face there—it appears to be peculiar, and I object to it on the ground no proper foundation has been laid, and it is incompetent.

Mr. Lucas: Its peculiarity, your Honor, I might say, is one of the reasons we have for its admissibility.

Mr. Rose: If you claim that my clients obliterated a communication of that kind and submitted a forgery, well, that is a different story. That is a pretty dangerous statement to make. Now, if he did it, I don't care anything about it. But there is no foundation, and it is incredible that you attempt

(Testimony of Willard Eugene Warren.)

to inject a thing of this character on redirect and not part of your case in chief. You haven't laid any foundation. We have gone in and canvassed this man as to all conversations thoroughly over and over again, we have had days of it; now on redirect you come in with this instrument. It looks to be a tampering with a document of a department of the United States, and you want to admit it against us on this haphazard and skimpy foundation that he saw one. I certainly object to it, your Honor.

Mr. Lucas: You are peculiarly sensitive about it, Mr. Rose.

Mr. Rose: I certainly am, because that is a government [1115] letter and obviously a blind man, a five-year-old child by examining that document can ascertain that is a forgery of some kind. It certainly is no document that the Government of the United States would send out, and I think your trying to saddle that around our necks at this stage of the case is going pretty far afield. That is my impression.

Isn't it apparent, your Honor, that is a mutilated, forged document supposed to be emanating in 1934 from a government department?

The Court: Mr. Rose, I am not answering any questions.

Mr. Lucas: The witness told us, your Honor, that was part of the sales kit that was given, and I asked him particularly is it now in the same condition it was in when it was given to him or to his

(Testimony of Willard Eugene Warren.)

salesmen, and he said yes. Now, with respect to this, your Honor——

Mr. Rose: Why didn't you set it out in your indictment? You would have had a pretty good argument there.

The Court: What do you want to say?

Mr. Lucas: This is dated July 17, 1935, on the outside of the envelope; it is documentary evidence of the plan as it started in 1937 between this witness and Mr. Danziger——

The Court: '37.

Mr. Lucas: '35, pardon me, your Honor. And Mr. Danziger left for New York shortly after that. The testimony shows that Mr. Danziger was in New York at the time——

Mr. Rose: You mean left for England? [1116]

Mr. Lucas: At the time it was mailed, so it is well within the reach of the indictment.

The Court: The three documents may come in over the objection.

Mr. Rose: May an exception be allowed?

The Court: Exception allowed.

Mr. Lucas: Your Honor, I have a certified copy of the incorporation——

The Clerk: That will be 112.

(The documents referred to were marked as Government's Exhibit No. 112, and received in evidence.)

Mr. Lucas: I have a certified copy of the Articles of Incorporation of the Wake Development Company. I am perfectly willing to offer them in

(Testimony of Willard Eugene Warren.)

evidence, unless counsel wants to stipulate that the Wake Development Company is a corporation within the allegations of the indictment.

The Court: They are admitted.

The Clerk: 113.

(The document referred to was marked as Government's Exhibit No. 113, and received in evidence.)

Mr. Lucas: The government rests.

Mr. Rose: You don't want to rest until I finish examining him, do you?

Mr. Lucas: You have further recross?

Mr. Rose: You have gone into quite a number of matters.

Mr. Lucas: I am sorry. [1117]

#### Recross Examination

By Mr. Rose:

Q. You say you lived in the Imperial Hotel in the summer of 1937? A. Yes, some part of it.

Q. What period of 1937 did you reside at the Imperial Hotel in New York?

A. I couldn't be specific about that.

Q. Were you there during the entire month of July, 1937?

A. I can't say that I was there during the entire month.

Q. Have you any recollection of being anywhere other than New York City during the month of July, 1937?

A. You mean any time during the month?



(Testimony of Willard Eugene Warren.)

Q. Yes.

A. Well, I couldn't tell you that. I might have been out, a short ways out, but not any great distance that I remember.

Q. Under what name were you registered at the Imperial Hotel?      A. George Carlton.

Q. When did you move in there?

A. Oh, I moved in there at various times. I used to check in and check out frequently, Mr. Rose.

Q. You told us last Friday that you resorted to the [1118] use of the name George Carlton in 1940. Do you remember that?

A. Yes, I used the name George Carlton in 1942.

Q. In 1942?      A. In 1940, also.

Q. Didn't you tell us that was the first time you used it?      A. Oh, I don't think so.

Q. Can you tell us any other place that you were at in the month of July, 1937, other than New York City?

A. Not unless I have something to refresh my memory, Mr. Rose I can't think of that offhand.

Q. Now, this \$7,000 check from Mrs. Parsons was an outcropping of that transaction reflected in this letter that you caused Mrs. Parsons to transmit to the Trinidad Company in the month of June, 1937, isn't that a fact?

A. No, not to my knowledge, at all.

Q. What was this 700 shares that was to be transferred out of the name of Edwards to Mrs. Parsons? Wasn't that part of the \$7,000 transaction?      A. No, sir.

(Testimony of Willard Eugene Warren.)

Q. Well, were you transferring 700 shares to her for any other money you were to receive from her other than the \$7,000?

A. Yes, it was an accumulation of money that I had received as long as I had sold Mrs. Parsons and obtained the [1119] stock, evidently, in my name Edwards, and then delivered to her part as I received it probably two or three hundred shares at a time as I would get the stock transferred in my name from the Wake Company, and she was accumulating it, and then I told her to transfer all the stock at one time during the time she wrote the letter.

Q. And the time she wrote the letter is the time you cooked up this \$7,000 deal with her, isn't that a fact?

A. No, I didn't have anything to do with cooking that deal up.

Q. You had nothing to do with cooking up the \$7,000 deal?

A. I didn't visit her and make the sale, Mr. Rose.

Q. Who did?

A. Mr. Robbins, Mr. Joe Robbins, at a later date.

Q. Mr. Robbins?      A. Yes.

Q. When did he visit her?

A. He visited her in July.

Q. In July?      A. Yes.

Q. What part of July?

(Testimony of Willard Eugene Warren.)

A. Well, along about the time that check was dated, the latter part of July.

Q. Did you ever introduce Mr. Robbins to Mr. Danziger?      A. No, sir. [1120]

Q. Who was this Mr. Shaeffer?

A. Mr. Shaeffer is a friend of Mr. Robbins.

Q. Then, the three of you divided the money you got out of this \$7,000, other than the sum that was paid for the stock that went to Mrs. Parsons, isn't that right?

A. Yes, we had a division of our part of the deal.

Q. When had you ever assertedly discussed with Mr. Danziger that you expected to get \$7,000 from Mrs. Parsons, previous to the time that you actually had this \$7,000 in your possession?

A. Before Mr. Robbins left, when he came back from England.

Q. When who came back from England?

A. Mr. Danziger.

Q. Did you tell him anything about Mr. Robbins when he came back from England?

A. I don't remember telling about Mr. Robbins himself; I told him I had a salesman——

Q. Did you tell him anything about Mr. Shaeffer?

A. I told him I had a salesman to make the sale.

Q. You told him you had a salesman to make a sale for how much?      A. About \$10,000.

Q. How many shares were you going to sell?

A. We hadn't determined that.

Q. What did you tell Mr. Danziger about it?

(Testimony of Willard Eugene Warren.)

A. I told Mr. Danziger he was to make the delivery, and for that he would get his pro rata share of the profits.

Q. He was to make the delivery of what?

A. Of the all the stock that would be necessary to complete the deal.

Q. How much stock?

A. I don't remember how much.

Q. How much was he to receive?

A. He was to receive, to the best of my memory, about sixteen or seventeen hundred dollars.

Q. For how many shares?

A. For all the stock that was necessary to make the delivery.

Q. Was it over 1700 shares?

A. 1700? It wasn't that much. It was a lot less than that.

Q. Did you tell Mr. Danziger that the Wake Company was to get more than a dollar a share?

A. We didn't discuss shares; we were only interested in dividing the money.

Q. How did you tell him you were going to divide it?

A. Well, in the first place, we had——

Q. Why don't you tell us what was said?

A. I don't remember the exact conversation, except he was agreed——

Q. What is your best memory of what was said?

A. The best memory was he was to collect the money and we had a stated amount——

Q. How much?



(Testimony of Willard Eugene Warren.)

A. He was to retain all except what was telegraphed to me at the Imperial Hotel.

Q. How much was that?

A. I don't remember right now, Mr. Rose.

Q. What is your best recollection?

A. If you have the books you can find it.

Q. What is your best recollection?

A. The best recollection I have is it was some fifty some hundred dollars, fifty-two or three or four hundred dollars, something like that, that he wired, that was wired out there from California.

Q. Did the Wake Company get any more than a dollar a share for whatever shares were involved in this transaction?

A. Yes, I think they did.

Q. How much?

A. Probably two dollars or three dollars, more than that; more than a dollar a share, though, because there wasn't any specific price stated on the deal, how many shares, it was just understood whatever sale Mr. Robbins made or was made to Mrs. Parsons, that he would make the delivery.

Q. You never mentioned the name Robbins or Shaeffer to Mr. Danziger at any time, did you?

A. Well, it is—

Q. Why don't you answer my question?

A. Why don't you wait? I am trying to.

Mr. Rose: Will you read the question to the witness?

(The following question was read: "You never mentioned the name Robbins or Shaeffer to Mr. Danziger at any time, did you?")

(Testimony of Willard Eugene Warren.)

A. I might have, because we discussed the deal.

Mr. Rose: I move that be stricken, your Honor, as not responsive.

The Court: Denied.

Q. By Mr. Rose: Where did you discuss the deal with him?

A. I remember talking to him in the lobby of the Barbizon Plaza Hotel.

Q. On what date?

A. I don't remember the exact date.

Q. What is your best recollection?

A. I can't recollect.

Q. What did you say?

A. Well, we had conversations——

Q. "What did you say?" is what I asked you.

A. Why don't you wait and I will tell you?

Q. Tell us what you said.

A. Take your time. I told Mr. Danziger—I asked Mr. Danziger if he had a pleasant trip. He said, "Yes, but [1124] I am glad to get home." He says, "Did you get all my mail?" I says, "Yes, I have got your mail."

He says, "I sent lots of things out to Alda Faulkner and the Wake Development Company in California, and told her to reforward them to you because I didn't know where you were all the time. I guess she kept in touch with you all the time, didn't she?"

And I said, "Yes, I have been able to keep in touch with Alda at all times, and she has been very proficient in making and supplying answers to all

(Testimony of Willard Eugene Warren.)

the calls I made, and so forth, and everything has gone along all right, except my situation in Chicago, which, of course, I am very much perturbed about and upset."

And he said, "Yes, that is a very terrible thing, I am awfully sorry that thing had to happen as it did." He said, "I would like you to sit down and tell me a whole lot more about that."

Q. Did you understand I have been asking you about what was said about this Parsons deal?

A. I though you wanted to know what we all talked about. And then later on he said, "Did you get my letter about Mrs. Parsons?"

And I said, "Yes." He says, "Can you make——"

Q. Just a minute. Where is this letter that you got about Mrs. Parsons?

A. Well, I received a letter from Mr. Danziger in [1125] which he said, "I hope you can do something on the Parsons deal, because I am——"

The Court: Is that the letter you are talking about now?

A. That's the letter I am talking about.

Q. Go ahead.

A. I had received his letter, and I also received a duplicate from the Wake Development Company in California, from Alda Faulkner, because she had sent an exact copy of his letter to me.

Q. Now, if you don't mind, will you get back to what you said to Mr. Danziger about the Parsons transaction?

A. Yes, I said, "I have arranged to do some-

(Testimony of Willard Eugene Warren.)

thing with Mrs. Parsons. I can't personally call on her, because I have exhausted about all the stories that I can tell her any more, but," I said, "I have gotten ahold of a salesman who I think is just the type that——"

The Court: This has all been covered. You don't need to go into it.

The Witness: Well——

The Court: I am addressing Mr. Rose. This has all been covered, Mr. Rose; not only once, but several times.

Mr. Rose: I think that will be all.

Mr. Lucas: The government rests, your Honor. Step down.

(Witness excused.) [1126]

The Court: I, of course, don't know what your plans are, Mr. Rose. If you need time to determine your course now that the government has rested, I am quite willing that you have it. By that I mean I leave it to you whether you want to go on this afternoon or whether you want to take until tomorrow morning.

Mr. Rose: As your Honor probably recognizes, I have in mind a series of motions that I am going to direct to the Court.

The Court: I can hear them this afternoon. We will recess now. Would it assist you——

Mr. Rose: What I had in mind is this: I don't want your Honor to think I am saying this critically, but the exhibits under your Honor's efficient handling of the matter have come in so fast that,



frankly, I didn't even have a chance to make a memorandum, clearly, of many of them. I think we would really save time if I devote this afternoon here to making certain memoranda concerning which I desire to make certain motions; that is, as to documents and things of that kind. I think we will probably save time.

The Court: Very well, that may be done. We will adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, at 3:35 o'clock p.m., Monday, January 29, 1945, an adjournment was taken until Tuesday, January 30, 1945, at 10:00 o'clock a.m.) [1127]



No. 10989

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL PETROLEUM, LTD., and  
WAKE DEVELOPMENT COMPANY,  
Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record  
In Four Volumes  
Volume IV  
Pages 1411 to 1848

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

FEB 26 1946





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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division



Los Angeles, California,

Tuesday, January 30, 1945, 10:00 a. m.

Te Clerk: United States vs. Danziger.

Mr. Lucas: Ready for the government.

Mr. Rose: Your Honor, I observe the presence in the court room, at this stage of the proceedings, of the party known as Warren in this case, and Carter, and so forth.

I feel now that the government has rested that there is no occasion for him being present, and any remarks that I may address to the court in connection with this matter—that he, necessarily, should be excluded at this stage of the proceedings. He is not essential, he is not a party on trial, so I don't think it would be proper for him to be present and listen to and observe the theories of the matters that are before the court, and any observations that I may make on them; and I ask your Honor that he be excluded at this stage of the proceedings.

The Court: I am not clear about my right to exclude anybody from a criminal trial.

Mr. Rose: His status, your Honor, in the highest degree that it can be given in this proceeding, in view of the record——

The Court: It doesn't make a bit of difference to me. Does it to you, Mr. Lucas?

Mr. Lucas: No, your Honor, personally; but I think it would be a grave error of the court, upon the request of [1129] anybody, to exclude a man who is on trial. The law provides he shall be present at all stages of any proceedings where proceed-

ings are going on that might be taken against him. Therefore, he has not only the right, but his presence is imperative and necessary under the law, in my view.

Mr. Rose: You contend, counsel, that he is on trial in this proceeding?

Mr. Lucas: I say that proceedings are being taken against him in the course of this matter here, and he does not occupy the status even of a witness.

The Court: Well, this is clear, unless the United States attorney were in agreement—and apparently he is not—that it would be within my province to exclude the defendant named, I must decline the request.

Mr. Rose: At this time, your Honor, I would desire to address a series of motions to the court.

The first motion that I submit to your Honor is a motion to quash the return of service of the so-called summons and citation addressed against the Trinidad International Petroleum, Ltd., a Nevada corporation, named as a defendant in this indictment, upon the ground that it affirmatively appears by the records and proceedings and the proofs herein that no arraignment of said defendant was had as provided by law. That is, the only proof in support of the arraignment culminating in the plea, ostensibly, in behalf of said defendant, is the return of a deputy marshal of [1130] this district asserting that he left a certain citation with a stenographer in the law offices of J. M. Danziger.

I submit that this is not such service as is provided by statute or by the law; and while I recog-



nize that this court, where a defendant regularly appearing before it stands mute and declines to plea, may very well, in fact the law provides that a plea of not guilty be interposed in behalf of the mute defendant who is properly before the court, I have been placed in the position of representing this defendant by a direction of the court.

Your Honor, undoubtedly, I recognize has the right to appoint counsel who are admitted as attorneys to practice law before this court to represent defendants who are before this court who are not represented by counsel; but I think I would be remiss in my responsibilities and duties in this proceeding if I were not to seriously and urgently present the motion that I am now making in behalf of this defendant.

The Court: Do you care to be heard on that, Mr. Lucas?

Mr. Lucas: What is that, your Honor?

The Court: Do you care to be heard on this motion?

Mr. Lucas: Other than this, your Honor, to say that the matter has previously been presented to the court, not in the exact words of a motion to quash the proceedings or quash the plea, but the matter was taken before the court, preliminary to the trial, and entirely gone into, and I [1131] would call the court's attention to the additional and subsequent facts that occurred in the trial which the court did not have before it at the time of the trial.

We have now, in the course of the proceeding, read into the record the sworn testimony of Jacob

Danziger, the individual defendant here, wherein he has outlined the status of the Trinidad International Petroleum Corporation, saying that he is president and chairman of the board of that corporation. We have introduced its articles of incorporation showing the place of its incorporation. His testimony shows that he is the dominant factor of that corporation, its sole and only active officer in this country, so far as the record showed. Therefore the motion to quash has no basis in substantiality. There has been considerable relaxation of the rule and heretofore obtained in common law by an arraignment. We threshed that out substantially as to the defendant Danziger prior to this case being assigned to this particular court for trial. The arraignment is merely the formal proceeding whereby the proceedings are started and a defendant is noticed or warned that proceedings are had against him. So, in this instance I can see no occasion whatever in the record, or otherwise, for the granting of a motion to quash the return.

Mr. Rose: In that connection, your Honor, counsel seems to overlook, in connection with evidentiary matter, the important element of time and the legal implications of [1132] corporate identity. He is trying to urge, your Honor, that because Mr. Mainland during the *month* of 1941, at a period long prior to the filing of this indictment, asked a particular witness whether he was an officer of the corporation, that therefore your Honor must assume, in the absence of evidence, that he was an officer three years later or more than three years

later, at the time of this attempt to arraign this defendant, this corporate defendant on trial, that your Honor can infer that because one was an officer at one time, therefore he must, necessarily, be an officer at another time.

The point is there was no attempt made, in fact, as provided by law, to arraign that corporate defendant even through Mr. Danziger. Now, the fact of the matter is that despite counsel's motions to the contrary, namely, that because one says, "I am the dominant figure in this company," that that is important, and that that, in fact, disposes of all the law that is built up around a corporate entity, a corporation, as your Honor well recognizes, is a creature of the law and functions through a body. The minutes of this particular corporate defendant are before the court, and it shows that there are a group of officers. Wherever the Trinidad stationery has found its way into this record, your Honor will observe there has been a president, a vice-president, there have been secretaries, and other officers; and I submit that what counsel is [1133] talking about, namely, that there has been a relaxation in respect to the subject of arraignment, that merely means that the courts have recognized if a person or corporation has been properly brought before the court and there hasn't been the formality with which arraignments were formerly made preliminary to a plea, that the court will not per se regard that as bringing about a miscarriage of justice. But the situation I am addressing to your Honor is more comprehensive than that. We have

an entirely different situation here. I am, by direction of your Honor, representing a corporate defendant that did not engage me, and I, as an officer of this court, respectfully submit, from the information I have at this time, that Mr. Danziger, in fact, is not an officer of the Trinidad corporation nor was he at the time that this proceeding commenced, that is, the trial of this action.

The Court: Mr. Rose, I will reserve decision on the motion until I hear the whole discussion.

Mr. Rose: Your Honor recognizes why I feel it my duty to present this motion, because as I remember, I can't remember the case, your Honor—your Honor undoubtedly does—in which your Honor wrote a decision in which you distinguished the difference between the proceeding against the corporation and its officers, and I think your Honor indicated in that decision, as I recall it, that the better practice would even be to indict them separately, as I [1134] remember that decision. Does your Honor recall that? It was some kind of a steamship case. A captain was involved, and your Honor pointed out not only are the individual defendants and the corporate defendants separate and apart, but you actually advocated, I think it was sound law——

The Court: Mr. Rose, you shouldn't be looking into my record that way.

Mr. Rose: Frankly, why shouldn't I, your Honor? The best expression I could find on the subjects that we are involved in here would be to find out whether your Honor has previously written



a decision on some of these topics, and I didn't have enough time, but I did, your Honor, attempt to find such cases as were available that your Honor had passed on, and I recall in the course of that research that particular case that I have reference to.

The Court: I will reserve decision, Mr. Rose.

Mr. Rose: Now, your Honor, may it be deemed, in behalf of expediency, that I am directing the same motion on the same ground and on each of the conditions submitted to the court in my motion, a similar motion in behalf of the corporate defendant Wake Development Company, a Delaware corporation.

The Court: I will reserve decision as to that.

Mr. Rose: Very well. Now, your Honor, going over this indictment here I have been rather in a quandary in certain respects to determine, in part, at least the theory of the [1135] government's case. Your Honor will recall toward the closing phases of this case, just within a few days before the end of last week, your Honor addressed to opposing counsel a question concerning his theory of this conspiracy. On other occasions your Honor has asked him when he thought this conspiracy formed.

As your Honor observes from the record before you, I find this to be the case: The undisputed evidence in this case shows that the indictment in this case in the various counts were procured solely upon the testimony of Mr. Mainland and Miss Skinner, as I remember it, who was present in court here. As your Honor remembers, Miss Skinner testified that this Mr. Warren approached her and told her

something about an oil speculation in New Mexico. Then you have the hearsay of Mr. Mainland. In other words, the indictment in this case was not brought about by the valuable testimony of this paragon of virtue, Mr. Warren, who has come forward here, after his apprehension, but it was in the main based upon surmise, speculation and conjecture.

I was placed in the peculiar position in this case, your Honor, having been brought into it some three years after the indictment was returned and filed, and having taken the legal position that was addressed to your Honor in the incipency of your connection with this matter, I was placed in the position of opposing any proceedings on the theory that the court was without jurisdiction after this long [1136] delay, and in view of the intervening circumstances to proceed at all as against the defendant Mr. Danziger. At that time I was not appearing on behalf of the corporate defendants. Having assumed that position, I could not, paradoxically, your Honor, interpose any plea in the form of a dilatory plea. But, I submit that it now appears, at the conclusion of the government's case, that this indictment was procured contrary to all legal concepts and principles, namely, the various and several counts of this indictment could not, possibly, according to established principles of law, be properly returned on this hearsay and the flimsy testimony of Miss Skinner.

In the normal course of events, had this case progressed along the usual or normal lines, namely, the

defendant is brought in shortly after his indictment and is required to join issue, I submit to your Honor I would have made a motion to quash the indictment on the ground that it was procured illegally and contrary to the laws of the United States. It was procured purely on hearsay and on unsubstantial evidence to warrant and support the indictment.

For that reason, now that these facts appear evident at the conclusion of the government's case, I address to your Honor a motion to quash the indictment upon the grounds that the same was procured contrary to the laws of the United States, in violation of the constitutional provisos, namely, due process, the equal protections of the law and the [1137] statutes in cases concerning the subject of the requisite evidence and character of evidence that is essentially required in order to vote an indictment against an accused and put him to trial.

The Court: Mr. Lucas, I will hear you.

Mr. Lucas: I don't care to be heard unless your Honor wants me to be heard. First, the government's theory is that a motion to quash the indictment, as announced and argued by counsel for the defendant, raises no substantial question that this court can pass upon at this time. All matters occurring before the grand jury, and anything antecedent to the indictment, must be raised either at the time of plea or prior thereto. The question of who testified before the grand jury and who didn't are all questions that cannot be raised.

The Court: At all?

Mr. Lucas: At this time. And if raised must

be raised in a different manner than it is here attempted to be raised.

The Court: What manner?

Mr. Lucas: The mere fact that the witness has testified here, Mr. Mainland and Miss Skinner, that they were persons who testified before the grand jury, does not work a constitutional defect in any manner, or deprive this defendant or any of the defendants of their constitutional rights. That is all that there is before this court, I think, some [1138] few words by Mr. Mainland, under cross examination by counsel, and some few words by Miss Skinner, as to her testimony before the grand jury.

The Court: Have somebody get us a copy of the new rules of federal criminal procedure. There are many of them in the building; they have been sent here just since I came down, in January, the final draft.

Mr. Lucas: I have not got that yet.

The Court: Every judge in the building has one, if you will have somebody get the last and final draft of the federal rules of criminal procedure. Every secretary has one.

Mr. Lucas: I have just asked Mr. Mainland to step in to Judge Harrison's secretary and get their copy.

The Court: The final draft, Mr. Mainland, not any preliminary draft.

I will reserve decision on the motion.

Mr. Rose: Your Honor, I have made a little outline of the various counts of this indictment



here. Now, I find, for example, in the first count that the defendants are jointly charged as having devised and intended to devise a scheme to cheat a class of persons, and then they refer to the stockholders of the Great Eastern Gas Company, and then of several mining companies, naming them. Now, they proceed to outline the fraudulent pretenses, promises and representations concerning the Trinidad International Petroleum [1139] securities, its operations and personnel was fraudulent. Then they state that among the scheme outlined was to misrepresent that the stock was listed and traded on the Stock Exchange in London.

While I am on this one point, I will make my observation; that they haven't even proved or pretended to prove that the stock, in fact, was not listed or traded on the Stock Exchange of London. And in that connection, I submit, your Honor, that there isn't a scintilla of proof that Mr. Danziger or the two corporate defendants ever represented to any one, either by way of voice or by way of a document, that the stocks were in fact listed.

We, of course, know from Mr. Warren, Carter, and what-have-you, that he told some of these people that the stock was listed. But he doesn't claim or pretend to claim that he was ever told by any of the other defendants on trial that he was directed to make any such representation.

So we have before us what? We have, firstly, the failure on the part of the prosecution to establish that the stock wasn't, in fact, listed. In so far as the corporate defendants are concerned in each

and every instance there is a letter on file that the stock was never listed. So, so far as any representation on the part of the defendants on trial, there is an utter failure to prove.

The Court: What is the letter you referred to?

Mr. Rose: Your Honor will remember in this group of [1140] letters that was sent on to some of these stockholders here, the letter in each instance specifically declares that the stock was not listed. Does your Honor remember that?

The Court: If you say it is there, why——

Mr. Rose: Yes, your Honor, in every instance, so far as the defendants on trial are concerned, the unqualified proof here is that they were informed that the T.I.P. stock has never been listed on any stock exchange, and the only time that it has ever been traded has been over the counter, so to speak, in the United States and England. That is the state of the record.

Now, the nebulous thing, as I remember it, in which this Mr. Warren was inclined to create an inference, was that, your Honor will remember, he said that while Mr. Danziger was in England he sent him a newspaper showing stock market quotations, and he wrote to him, "Well, you know how to use this." That is the extent to which this gentleman went. And I don't have to argue that; I am not going to try to argue, your Honor, what inference to draw from any of these matters. I just wanted to be sure that I present to your Honor, as I discuss these points, everything that is in the record.

I thought it my duty to call your Honor's attention to that nebulous little thing that is there.

Now, then, so far as the defendants on trial and the charge in the indictment that a scheme was devised, you [1141] find from the evidence here, even reversing the process that the law imposes upon us in a judicial proceeding, namely, to draw the inferences in favor of innocence and against the criminal intent, you find, one, that there is no evidence that in this alleged conspiracy prior to the leaving for England, and contrary to opposing counsel's contention that this scheme was planned long before Mr. Danziger left for England, you find neither in cross nor direct testimony on the part of Mr. Warren that there was any scheme or discussion respecting a representation that was to be made or ever considered to any prospective purchaser of stock that the stock was listed on the stock exchange, and, yet, this is listed as a part of the scheme, and you have no less representation to the court by Mr. Lucas that this so-called scheme and conspiracy, concerning which we have heard so much from him, originated prior to Mr. Danziger's departure for England.

Now, then, the second item, in line, in this so-called scheme was that Danziger was to receive the money for the securities or cause the corporation to receive the money and property sent in by the persons to be defrauded, and then distribute a part of it to defendants.

Now, what is the record in respect to the so-called scheme and conspiracy in 1935, prior to the de-

parture of Mr. Danziger? The record shows there was an agreement entered into which agreement must, presumptively, be deemed [1142] to have been according to law and not fraudulent. It wasn't an agreement between these two defendants; it was an agreement between the Great Eastern Gas Company, which they themselves have introduced, in writing. The agreement provided, and the evidence shows that the agreement was made between a brokerage firm and the Great Eastern Company in Delaware, in which 20,000 shares of the personally owned shares of stock of Wake Development Company were deposited in escrow, and when Mr. Danziger left for England the proceeds were to be handled in this escrow. So, contrary to the charge in this indictment, there never was an arrangement, so far as the undisputed and uncontradicted evidence up to this point in this case shows, that there was ever any such scheme as they outline here.

In other words, there was a valid agreement not between these defendants, but between the Great Eastern Company and its duly authorized representatives, not the co-defendants. The agreement, presumptively, they have introduced, and offered no evidence to the contrary, that it was entered into in good faith; there was an escrow made, and this escrow company in Delaware was delegated, and under the arrangements then existing and continuing to exist until long after the departure of Mr. Danziger to England this Delaware Company this trust company, were to handle the proceeds from this particular sale of Wake Development Company



personally owned stock. That is the state of the record in regard to the [1143] second so-called false pretense and scheme, which is controverted by their own evidence. They have introduced the agreement, they have developed in their testimony, through Mr. Warren, that an agreement was entered into not between Carter or the persons that they mention—and, incidentally, the government has left me in a quandary, I don't know how your Honor feels about it,—they name W. W. Wright and they name some others, they don't mention the Great Eastern Company or Dube or any of these persons, who were the parties to this agreement, and we don't know yet what omnibus fishing expedition they had in mind at that time when they politely voted the seventeen-count indictment. So I point out to your Honor that part of the scheme fails of any proof.

Now, I have noted the third. They say part of the scheme was to use fictitious names by persons calling on persons to be defrauded, and give them fictitious addresses. What is the state of the record, as I recall it, on that part of the scheme? Mr. Warren testified here that the first time he resorted to the use of fictitious names was after the Pierce transaction which occurred after the departure of Mr. Danziger to London, and your Honor will remember that exhibit that Mr. Warren admitted signing, that letter in which he wrote to Mr. Danziger protesting against the prompt cancellation of this whole deal. The undisputed evidence of these cablegrams from England, and the cable sent by Warren, incidentally, your Honor will remember

it is [1144] in evidence, was begging that the cancellation of this whole deal be set aside, and Mr. Warren who at that time tells us he was neutral, sends over to England that writing in the letter saying there was no necessity for any crooked work, this sale could have been made clean and there wouldn't have been any complaint, there could have been \$100,000 sold, and it shows what a warped mind will do.

I wonder what a warped mind is according to the mental processes of this individual?

But, in any event, he himself admits he was pure at that time, he admits it. So where is there any discussion——

The Court: You say he was neutral.

Mr. Rose: He says he was neutral. He said he left it neutral. I don't know what that means. But you notice he outlines there was no necessity in connection with \$100,000 of this stock that could be sold to one person, Mrs. Pierce, of doing it in anything but a clean manner. What does the state of the record show? The state of the record shows that at the first sign of any improper conduct Mr. Danziger repudiates and cancels the whole agreement. There it is at an end. The evidentiary record, the documentary record, clearly shows that. There can't be any argument about that, and he himself says that he didn't resort to the use of any fictitious names until 1936. So where have we anywhere in the record that segment of this so-called arch conspiracy? [1145]

Now, I made a note as to the fourth part of this

scheme. It says J. M. Danziger and the corporations would pretend they did not know the persons who had called on persons when they made inquiry of the company.

Now, my recollection is that it is Exhibit O, Defendant's Exhibit O, which Warren acknowledges sending, which shows that he wrote in November after Danziger had been in London for quite a while to Faulkner in the Wake Development Company, in which he begs to carry on and states that it will all be clean and there won't be any misrepresentations, and so forth.

Now, then, where is there any evidence, if opposing counsel's theory is to be given any consideration, that this conspiracy was something that occurred at the time he claims it occurred or at any other time? Where there are any agreements that these persons should use fictitious names, and that they should use false addresses and so forth? The fact of the matter is, as the record evidence shows, letters went out and they have introduced that, before and after Mr. Danziger's departure to England, on the letterhead of the Trinidad Corporation, outlining that an agreement had been entered into between Wake and the Trinidad Company, that is, between the Trinidad Company and the Great Eastern Company, in which they were to be given certain rights. The names of the personnel of the Trinidad Company are all outlined. In fact, there is a succinct declaration of their [1146] background antecedents and history, and their addresses, and, mind you, the escrow arrangement with the

Commonwealth Trust Company and the Great Eastern literature certainly gave their addresses, and even Warren who was so anxious to assist us here admits that he didn't use any fictitious name prior to 1936. So, where is there any evidence, be it so nebulous, that supports this fourth segment of the so-called scheme that counsel says occurred in '35?

Now, the fifth segment of this scheme. Your Honor, I will just show you how inconsistent these people are, and will show you they have just gone out with a bucket shop fire and show you you can't depend on them, they don't know themselves when this so-called conspiracy is presumed to have started. They say, for example, that a part of the scheme was for J. M. Danziger to use fictitious names in transmitting the funds to the other defendants. Now, in that connection, your Honor, what is the state of the record?

The state of the record is that the original plan, the Great Eastern Company received two-thirds of the proceeds, the escrow arrangement with the Commonwealth Trust Company, received two-thirds of the sale, that was the arrangement made preceding the going on of Mr. Danziger to England. Now, where is there any evidence that an agreement was entered into to transmit the funds? In 1940, and if my memory serves me, somewhere in December, 1940, there appears to have been another transmittal of some postal money orders [1147] and Western Union money orders to a man named Carlton. Now, they were transmitted, as your Honor remembers, under the name of "A. Levy" and in one instance



“T. Mack.” Now, that is something that occurred in 1940 to a man named Carlton.

Up to a change in the position taken by Warren, he testified, as I remember, that he never used the name Carlton prior to 1940. He may have used it in the latter part of '39. Now, there isn't a scintilla of evidence to show, even by the testimony of Warren, or Carter, or what-have-you, that he ever told anybody that he, Carter, Warren, or whatever he is, ever represented that he was Carlton to any of the defendants on trial.

So your Honor will see, as I pointed out to you, that this indictment and a lot of the allegations that are set forth in here, is a conglomeration of bits of surmise and conjecture.

I have no quarrel with Mr. Mainland; I think that this indictment and a lot of the allegations that are made; I commend the SEC for their work, they have done a very splendid work; but Mr. Mainland, in his zeal to follow through on this investigation into this corporation, as the record reflects, your Honor, ascertained that these transmittals of the postal money orders to Carlton, and the Western Union, were made, by reason of the examination here, as late as June, 1941. So that is the first time that Mr. Mainland in his checkup of these transactions finds out the bald fact that in [1148] 1940, in December, or thereabouts, a transmittal of money was made to Carlton in New York with the name of “A. Levy” in most of the instances, and in one instance the name of “T. Mack.”

So that fifth part of the scheme, if it was a scheme, couldn't possibly have come into being until 1940. The first time that any one who appeared before the grand jury—and it can't be Miss Skinner—that submitted that valuable piece of evidence to them, was Mr. Mainland's evidence or surmise as to what this so-called plan or scheme was, acquired by him in 1941, in June.

Now, that is the record in connection with that phase of the case. If I haven't made myself clear, your Honor, your Honor must keep in mind the '35 agreement was in escrow between the Great Eastern, and they were in agreement to receive the money, and they weren't to receive it in the name of Carlton; and I don't see the significance, although the prosecutors frequently attach great importance to the fact that a transmittal was made in the name of "Levy," or let it be Jones, or what-have you; they don't bother to find out why or how or the facts about it, but to them that is very significant.

I know that your Honor doesn't share that view, from a number of observations your Honor has made in the course of these proceedings, whether a person of that name exists or not. [1149]

Now, the sixth part of the scheme as I have noted here from my analysis of the indictment is that part of it that Danziger, Wake, and the Trinidad Company were to write to persons to be defrauded—no, when replying to persons, incidentally, not that had been already defrauded, but they use the language "to be defrauded"—we know what that means from

Hamlet—"would secretly submit such letters to the defendants who had called on them for the advice of such other defendants respecting the reply to be made."

Now, we have all the letters that reputedly were sent. We have them here twice, in duplicate, that is, the carbon copies, and we have the originals in many cases which were introduced by the stipulation, Mr. Mainland asserting that he received it from the addressee, and they are in evidence. Now, here again, according to the documentary evidence, we have no evidence that there was ever such agreement whatever. There is no discussion. Mr. Warren in his testimony outlining in his way the discussion of how this thing was to be handled has gone in at great length about this, and we find, apropos of opposing counsel's representation to your Honor that this scheme occurred in '35, we find here by undisputed proof that there wasn't any such program at all. The program was that \$20,000 of Wake's privately owned stock in the Trinidad Company was to be and was pursuant to an agreement deposited with a trust company in Delaware, by reason of an agreement in writing between the Great Eastern [1150] Gas Company and the Trinidad Company; hence, there isn't anything to this at all. If Carter or Warren or whatever he is wrote to Mrs. Faulkner in Los Angeles during the absence of Mr. Danziger in England, and it is not disputed he was there from I think September '35 to July '37, if any such arrangement was made that he was to get a copy of any letter,

that was an arrangement made which is left in the metaphysical realm, for the reason that there is nothing definite about it to indicate when that arrangement was made, and between whom; and of what criminal significance is it that a copy of any letters sent to any inquirer was sent to the Great Eastern or its representative? The evidence as developed up to yesterday shows that the Great Eastern still had an office in 1940 in New York City in the Longacre Building, to which communications were addressed.

So, your Honor will see that here, again, counsel for the government is not sure of his ground at all when he told your Honor this conspiracy was formed, the one they claim culminating in this indictment, supposed to have been formed in 1935. And we know there wasn't any such arrangement whatsoever made, according to the oral testimony or any of the proofs in this record. So much for the sixth.

Now, the seventh item here says that part of the scheme was that J. M. Danziger and Wake and T. I. P. should appear to be reluctant to take the money and property of the persons to be defrauded.

Now, when did this phase of this jumpy scheme take place? I am in a quandary to know where the government contends that there is any evidence that that was part of the scheme. It is true that in two instances, as I recall, I think one of them is a Mrs. Lawyer, there are three letters that go to her in which the Wake Development Company turned her down, they tell her they don't want to make the deal. Now, those transactions are in '39 and



possibly in '40, I am not certain without examining them, but I am quite sure that those particular transactions in which the government has introduced correspondence shows that the Wake Company didn't advise, indicate to the persons making the inquiry, that they had any inclination or disposition to make the deal. So, when does this stage of the conspiracy that opposing counsel tells your Honor was generated in 1935, when does this come into being, and between whom?

Now, as I pointed out, I am not sure of the language, but I remember in the case of *People v. Blackman*, it is either in 124 or 127 Cal., one of our Supreme Court decisions, it stands out in my mind, that case in the discussion of documentary evidence points out that you do not introduce a document into evidence for the purpose of proving, in the absence of specific proof, that it doesn't mean what it says. In other words, of course, I can establish that a document is a forgery; but I would proceed to prove that the document is not what it is by evidence that it is a [1152] forgery. But if I offered in evidence to your Honor in this case a document, and if by that document I seek to prove criminal intent or purpose, I can't introduce that document and then merely say that in my opinion that letter is just a sham, it is a phony.

Here are a series of communications going over the course of a year, and the company says, "If you think this is anything but a highly speculative stock, don't buy it. We advise you against it."

Now, when did that part of the scheme, so-called,

come into being? The letters that they refer to are letters in '39 and '40, so could that possibly have been the part of the conspiracy that opposing counsel tells your Honor occurred in '35, or for that matter in '37?

Those are the only two occasions when Mr. Warren, Carter, and so forth, ever met Mr. Danziger.

Incidentally, in passing, while I am thinking about this thing, what does it show your Honor? It shows he saw him a few times before he left for England in '35. He never even so much as had lunch with him or went out together. Can you imagine a couple of henchmen of his ilk, conspirators, who don't even go out and have a cup of coffee together or something? And then when does he meet him again? Twice or three times in '37 upon his return from England, at which time he tells him that he has been convicted in Illinois.

The Court: You break the morning to suit yourself. It [1153] is now 11:00 o'clock.

Mr. Rose: It is all right, your Honor, I am not reading anything. I am just referring to a note of parts of the indictment, so your Honor can take the recess now, if you will.

(A short recess was taken.)

Mr. Rose: Now, your Honor, the next item that I notice that is a segment of the indictment is the contention that part of the scheme was to use the mails and telephone and telegraph in dealing with the persons to be defrauded, and with each other.

Now, that is a rather vague and ephemeral allegation. We do know that the agreement which the

government has introduced in evidence provided that the Great Eastern Gas Company were to circularize their stockholders, advise them about the arrangement made with the Trinidad Company, and offer to them a right.

Now, as I pointed out, no evidence was even sought to be presented that that agreement was a bona fide and legitimate agreement between Great Eastern and Trinidad. Now, the use of that mail and the exercise of that right couldn't possibly be given any criminal significance. So this generalization is meaningless. As far as the telephone is concerned, nobody has come forward and said that Mr. Danziger or any representative of Trinidad or the Wake Development Company ever advised any salesman, "You go to a [1154] telephone and you tell that person a pack of fabrications."

We know that the telephone was resorted to surreptitiously by one Warren in this case; but even he has not assayed to tell your Honor that he ever received any such instructions from any of the defendants.

If this was part of the scheme, when did this segment of the scheme come into being? Certainly when Mr. Danziger left for England, as I have pointed out before, there is not a shred of evidence that any such scheme was even discussed or outlined.

So, as I say, this allegation is one of these generalizations that doesn't tell us anything.

In other words, I want to make it clear that I don't condone some of this reprehensible conduct

on the part of the defendant, or former defendant Warren, in this voluntary resort to this tricky activity on his part in telephoning to some of the persons we know he did, according to the persons' testimony and his own.

Now, these are things that occurred, again, in '38 and '39. Now, when did this part of the conspiracy, if it is a part of the conspiracy, come into being, and how was it brought about? There isn't anything here to help us or assist us on that part.

Now, following these specific outlinings of the so-called scheme, there is an enumeration of the representations. [1155]

The first is: T.I.P. owned valuable oil lands in Trinidad, New Mexico, and producing oil from its properties, had commercial wells thereon, and was in prosperous condition.

What is the state of the record in connection with these so-called representations? We do know, your Honor, that Warren, according to his confession in open court, and according to the testimony of two witnesses, at least, that came in here, did make statements in connection with some of the phases of the outline that I have just referred to. But what is the record evidence? The prosecution as late as yesterday introduced into evidence an exhibit produced from Warren or by him outlining the status of the Trinidad Company. The evidence shows that in the discussions with Danziger he had come there to New York to make some preliminary arrangements, and then went to England for the purpose of making arrangements for finances. Where does the



government contend that the defendants who are on trial now ever told Warren or anybody else that they were producing oil?

There is a prospectus that has been introduced into evidence. The S.E.C. had authorized the sale of 200,000 shares of that company's stock at \$5 par. The evidence of all documents shown and the discussions up to the time of Mr. Danziger's departure for England, show that the only representation made so far as any defendant or its representative [1156] are concerned, at that time, concerning the condition of finances of the company, were correct and true. There wasn't any discussion about misrepresenting them. As a matter of fact, the record shows that they hadn't any funds. That is what they were trying to raise. They had applied for permission to raise it in a lawful and proper manner. And so far as the fact that the T.I.P. had valuable oil land, there isn't a word of evidence in this case to the contrary.

I would like opposing counsel here to point out to your Honor where he has introduced anything that may be considered in the guise of evidence either oral or documentary that the Trinidad International Petroleum is not, perhaps, one of the most outstanding potential oil developments in the world. He hasn't produced any evidence.

I asked Mr. Mainland, "Did you ever find in your investigation"—and I was pretty broad—"did you ever find that that British geologist"—Craig, I think is his name—"who is considered one of the most distinguished geologists in the world, did you ever find that man's report on the Trinidad Inter-

national Petroleum lands was inaccurate?" And he said, "No, I never found anything to the contrary."

"Did you ever find out that they didn't have a couple of oil wells on there which were not in operation?" He said, "No."

Then what are we to do? Are we to assume, your Honor, [1157] —and, apparently, that is what opposing counsel has in mind, we are assume that just because he prefers to think so, that this Trinidad International Petroleum Company is a hoax; and yet it is not disputed in the files and records of the S.E.C., and Mr. Mainland admitted he didn't find anything to the contrary, there had been a half a million dollars put into this project before Danziger, the Wake Development Company, or Trinidad International Petroleum even takes hold of it.

The leases displayed to Mr. Warren, the so-called, shall I say front or rear end of the so-called conspiracy, are in evidence. He says they were shown to him. Now, they speak for themselves.

Now, if your Honor will outline—where is that, one of the last prosecution exhibits that came in here last night?

Here your Honor, as a part of Exhibit 112—and they have introduced that—is the "Information for company representatives relating to offer of Wake Development Company of shares and notes of Trinidad International Petroleum, Ltd.," and your Honor will see what the representations are. And it is the undisputed evidence that this is the thing that was handed to Mr. Warren, and that will tell you what representations were made.

As I say, your Honor, this is sheer speculation. So far as this court knows, so far as any one knows, from the [1158] record evidence here, we have a geologist's report, who is reputed—and it is not disputed—to be one of the most eminent geologists in the world, he gives a report on these lands, he reports on the character of oil that is prevalent there, he reports on the fact that there are a couple of wells on there.

Now, who told Warren or anybody else that they were pumping oil? I would like opposing counsel to tell me who assertedly testified that such representation was ever made by any of the defendants on trial.

I don't know what this man Warren may have told some of these people. He may have told him that they had gushers on there. But where do we fit in in that representation? So far as——

The Court: Mr. Rose, I am having the clerk hand you an exhibit, Exhibit 88. There is a very large figure there used as having previously been expended on the property. I thought at the time that might have been a mistake. It says seven and a half million dollars, as I read it.

Mr. Rose: Your Honor, I don't know.

I am informed, your Honor, in regard to this situation, that the half a million dollars referred to has been spent in drilling and such operations, but the British interests who had acquired this aggregation of some 200 parcels of land had actually invested in excess of six million dollars in the course of acquisition of those lands. [1159]

Now, in connection with that matter, your Honor—I am glad your Honor calls my attention to it—there has been no testimony about this particular letter on the part of any one here. There has been no testimony about it. Now, on what hypothesis can we assume, your Honor, that that statement is not true? Did the government come forward with any person to even venture an opinion?

Incidentally, I asked Mr. Mainland in the course of his investigation—and, incidentally, your Honor, this file was part of the papers in his custody, this was part of the record in Mr. Mainland's custody, acting for the S.E.C.—I asked him if he ever discovered that any representation about money that had been invested in that company, or the values of those lands, if any representations had ever been found to be false, and he said no.

This is your situation. I think somewhere in the record you will find that \$5,000 was paid for just the report by Craig, this geologist in England.

In the course of this long, rambling recital on the part of the witness Warren, your Honor, he has shown definitely, I am satisfied, that he wasn't privy to the merits of this transaction at all. So far as I can diagnose his characteristics, he doesn't even seem to be interested or concerned.

I don't think if you gave him American Telegraph and Telephone Company stock that he would go out and sell it [1160] without some exaggeration. I don't think he could, from what I have observed about him in court here.

Your Honor, incidentally, in the course of some



questions addressed to him asked him about this prophetic declaration in one of these communications here way back in 1938 about a possible closing of the Mediterranean, and he didn't comprehend what your Honor was even talking about. Now, this letter——

The Court: Maybe nobody else did.

Mr. Rose: Oh, no. The point is that that was something in the minds—if your Honor doesn't think that these British people and Mr. Danziger anticipated a possibility of that, you are in error. That is why they were——

The Court: I was just referring to my——

Mr. Rose: That merely indicates to my mind he wasn't privy to what was going on, nor did he care. For example, he doesn't profess to have ever discussed this subject of how much money had found its way into this project at any previous occasion. He does say that Mr. Danziger always spoke highly of these lands. He still does. But my point is where is there any evidence to raise an inference or presumption that the lands weren't, in fact, very valuable lands?

As I pointed out, in so far as the so-called conspiracy, he was never told or authorized, in going out to sell part of this G. E. escrow stock, or any other stock, to go out [1161] and make statements that they had commercial wells, and so forth, and were in so forth and so forth condition.

In the argumentative denials, having built up their straw men in the indictment, they then proceed argumentatively to deny them. They say that

contrary to the facts the rights were of no value.

What is the state of the record in regard to whether the rights were of value? Is there any evidence that they weren't of value? These persons who allegedly were hoodwinked and defrauded, in the main, so far as I can recall, paid \$3 for \$5 par stock and received the \$5 preferential note. The testimony so far as we know is that the Great Eastern Gas Company stock was of no value. That is their charge and that is their contention, and we don't take any issue with them on that. Now, on what assumption can the government claim that the rights were of no value, having failed to even take the trouble to find out the potential value and the potential value that the stock may acquire or could acquire?

As your Honor will notice, nobody returned the stock. So far as the record shows, they are still hanging on to it. They were picked up here by the government at their request in connection with their investigation; but there was no surrender made of it, or even, for that matter, an offer of surrender.

Now, the agreement introduced in evidence here between [1162] the Great Eastern Company for the issuance of those rights was an agreement that was entered into bona fide with an escrow and so forth, and we cannot assume that the rights were or are of no value. There isn't any evidence to that effect, even in opinion.

We do know that there was no discussion asserted to be had between Mr. Danziger or any rep-

representative of the corporate defendants with any other person that the stock was, in fact, listed on the London stock exchange.

I can point out to your Honor in every letter that went over to any one of these persons that there is an unqualified and definite declaration that it is not listed and never has been.

Shall I point that out to your Honor?

The Court: Yes, if you wish.

Mr. Rose: "These notes are not listed and are traded over the counter. We have been advised that sales have been made during the past year, prices ranging from 12 to 20 shillings or the equivalent of 3 to 5 dollars American money."

Your Honor will find that representation on the Wake letterhead to these persons who were asserted to be defrauded in every instance. They are specifically advised that they are not listed.

I do not try to state to your Honor that Warren or Carter or his henchmen did not tell these people that they [1163] were listed; but I say where is there any evidence that we were a party to that or ever agreed to it? That is the point I am urging. They don't claim that we ever stated that it was listed on the stock exchange.

I can show you letter after letter, the minute that question comes up, without equivocation, without any hedging, any person who made inquiry respecting this Trinidad stock was told that the stock had never been listed on the stock exchange. And as far as the price is concerned, no representation is made that it ever brought any more than the par.

That is the point that I want to point out to your Honor. They say the representation of listing in London. That representation was made by these connivers and contrivers who were acting in cahoots with Mr. Warren. But I want to know where is there any testimony that we were ever privy to that, or ever even discussed it,—when our letters definitely show that it was not listed.

There is the other phase which I think is a detestable thing: that trick that Warren seemed to be so proud of it in calling on some of these persons, telling them that he was a representative of some Sterling Company in Canada who were interested in buying up the preferential notes at a higher price than the par, or something to that effect. We know he did it. He confesses he did. But where is there any evidence that we, the defendants on trial, were ever particeps criminis, or participated, or even were privy to [1164] such thing?

As a matter of fact, you will find in the documentary evidence on trial that wherever that question came up we denounced it and repudiated it and made it quite clear that no such representation was ever authorized.

As I say, although that misconduct, and I certainly confess that it is, that strategem resorted to on the part of Mr. Warren and his henchmen is not to be condoned, nor is he to be applauded for it, where does the government contend that we, assertedly, entered into a conspiracy of that type, and when did we do it?

There is that reference to the fact that a note was



sent in 1940 to be signed by Mrs. Parsons for the balance due for the certificate.

That about concludes an analysis and diagnosis of count 1.

I respectfully submit to your Honor, so far as I can glean from the most impartial approach to a consideration of the evidence in this case, where is there anything to uphold any one of these segments of this so-called conspiracy?

You will find as we review the evidence in this record up to the present time that something of this character that is hinted upon in here occurred in 1940 for the first time, something occurred in '39, something of that character occurred in one instance in '38; but if the government's representation to your Honor is correct that this conspiracy [1165] charged in the indictment was formulated in 1935, how can we reconcile these divergent plans in the face of the fact that even Warren doesn't confess that he ever discussed with any of the defendants or their representatives on trial the subject of resorting to the tricks and devices that he employed?

The Court: May I ask you a question now? Your plan, I take it, is to make a complete argument, as you have been doing on count 1, as to all of the counts? You are going to state another motion pretty soon?

Mr. Rose: Yes.

The Court: Your plan is to make a complete argument as to all of the counts at this time?

Mr. Rose: That's right.

The Court: That would call upon you to make a full statement of the government's position, Mr. Lucas, and I would like for you to be prepared to follow Mr. Rose as he concludes as to each count. Do you see what I mean?

Mr. Lucas: Yes, I shall try to follow that.

The Court: That is what I am going to have you do. Instead of hearing Mr. Rose clear through on all of the 17 counts and then hear you in answer to them, when he finishes, as he appears to be doing now, his discussion about count 1, then I will want you to answer, as however you think it should be answered, his discussion up to that point. [1166]

Mr. Lucas: Yes.

The Court: Then I will hear him again and then I will hear you again.

Mr. Lucas: Very well.

The Court: And so on through the 17 counts of the indictment.

Mr. Lucas: I have been listening very carefully to Mr. Rose——

The Court: He hasn't finished.

Mr. Lucas: It was only in the last two or three minutes that I discovered that he was talking about count 1. I thought he was making a general resume.

The Court: I don't know that he is through. I saw you pulling yourself together like one does when they are being called on. I wanted you to know how I am going to split up this discussion, so you could plan accordingly.

You haven't finished?

Mr. Rose: If it is agreeable to your Honor, and

I think it is a very happy proposal and will expedite things, as to each count I am disposed to defer presenting the motion until the government indicates their position on the count.

The Court: No, no; I want you to state your full position as to each count separately.

Mr. Rose: Very well.

The Court: Incidentally, it will save you from wearing [1167] yourself out.

Mr. Rose: Your Honor, by reason of the matters and things that I have outlined to the court in an analysis of the allegations and the proofs in respect to the recitals, charges, allegations, contentions, set forth in count 1, and the evidence thereon, in behalf of the defendant J. M. Danziger, as an individual, I move that the same be quashed and dismissed upon the following grounds, severally: One, that it does not appear by the government's evidence that the defendant J. M. Danziger, individually and personally, participated in that degree requisite and required by law to bind him as an individual in any of the asserted acts supported by any of the proofs offered by the government of the divers acts and things charged in the first count of the indictment, and upon the ground that there is a failure of evidence of any competency to establish that the defendant J. M. Danziger individually, was privy to or actually participated in or personally authorized any of the acts shown by the evidence presented to this honorable court in support of count 1 of the indictment.

The Court: Now, complete your motions as to that count.

Mr. Rose: I, therefore, move that said count as to J. M. Danziger, personally as an individual, be quashed and annulled.

The Court: Now I will hear you, Mr. Lucas. I realize, [1168] of course, that the argument both of Mr. Rose and by you, Mr. Lucas, will be longest as to this count, because it involves a discussion of the major background to all of the counts, but we have 15 minutes, and you might just as well begin. [1169]

Mr. Lucas: Yes, your Honor. With respect to the motion to quash the indictment in its entirety on constitutional grounds, I would direct the court that, first, the motion to quash the indictment is not favored by the courts, although it does not want for statutory recognition.

Mr. Rose: Excuse the interruption, counsel. Maybe I am not oriented at the moment. You are going back to the motion that his Honor has already heard and has reserved the ruling on? As I understand it, his Honor has asked you to submit the government's position in connection with the motion addressed to count 1.

The Court: If he has some new ideas about your third motion, which is the one he is talking about now, numerically, I will be glad to hear him.

Mr. Lucas: I would like to touch upon it. I appreciate your Honor has indicated you are going to make some study of it yourself, but I would like to be heard briefly on it.

The Court: All right.

Mr. Lucas: First, the time for the motion, the



courts seem to be in accord that the motion to quash should be made as soon as possible after the return of the indictment and ordinarily before pleading to the indictment. They recognize, however, that where counsel has not had time prior to the arraignment to study the indictment or grand jury proceedings, that upon being compelled to plead, or at the time of arraignment they can ask permission to withdraw [1170] the plea for making the motion to quash. However, none of those proceedings were started here.

But where a motion to quash the indictment is based on the failure of the indictment to state facts sufficient to constitute a crime, or former jeopardy, or the statute of limitations, it may be made at any time before the verdict.

However, that, as I follow Mr. Rose's argument, is not one of his grounds.

There are many grounds for a motion to quash, and they do not lend themselves readily to classification. In general, the motion may be made upon one or more of the following:

Defects or irregularities in the drawing, summoning or in handling and organization of the grand jury.

I have heard no argument addressed to that, but merely as to the number of witnesses before the grand jury. Secondly, illegality in the proceedings of the grand jury.

I have heard no argument about that.

Third, matters appearing on the face of the indictment rendering the latter insufficient.

I have heard nothing on that.

Therefore, I take it that all of the authorities with which I am familiar, your Honor——

The Court: Could an indictment be returned without any evidence?

Mr. Lucas: Yes; clearly. [1171]

The Court: Without any evidence?

Mr. Lucas: I take it that no one can go into this proceedings here and question at this late date the wisdom or authority or right or discretion of the grand jury. However, we need not decide that issue, because based upon the proceedings here before this court already we have the fact in evidence that witnesses were sworn and testified. So, that is not one of the grounds for the motion to quash the indictment, that no evidence was offered or that there was any irregularity in the manner of subpoenaing or summoning or eliciting from witnesses before the grand jury.

The Court: What he says here is it developed during the trial that only Mr. Mainland and Adeline Skinner appeared before the grand jury, and of course the trial has shown that they could not have had knowledge of all of the facts that are included in the indictment.

Mr. Lucas: That is true, they probably could not. Adeline Skinner could only testify as to her part. Mr. Mainland was a qualified witness to testify as to the entire result, or, rather, the result of his entire investigation. He had before him, at least I take it presumptively, the sworn testimony of the defendant in this case, Jacob Danziger, which may have been read before the grand jury.

The Court: I am not very familiar with the common law procedure—of course, that is what we are dealing with, I guess—of motions to quash indictments. These [1172] new rules that we refer to make explicit provisions, they codify, we will put it that way, what may be done by way of attacking proceedings before a grand jury, and I was going to take a look at them a little during the noon hour for what light they throw on this discussion.

Mr. Lucas: I have numerous authorities here supporting each of the matters that I have addressed myself to, which I will be glad to cite to the court in support of them. As a matter of fact, the courts have repeatedly upheld enforcing the doctrine of laches in regard to a motion to quash an indictment, that three years having gone by since the filing of the indictment that it is now too late.

The Court: How does the man know his indictment until he is arraigned?

Mr. Lucas: In this instance the record shows that the defendant procured a copy of the indictment, but he was never arraigned on it.

In addition, from discussing the feature of the case produced here, there is a record, a letter, in the evidence, I recall, your Honor, introduced somewhat late in the proceedings, bearing one of the higher numbers there, in which the defendant himself in a communication addressed to the witness Carter says that, "I know that this thing has been pending against me. It has a way of outlawing."

The Court: A man probably couldn't be indicted solely on evidence illegally obtained by illegal

search or seizure. [1173] He probably couldn't be indicted legally solely on hearsay evidence, I would think.

Mr. Lucas: I don't want to be drawn into a discussion of those problems, unless your Honor thinks it is pertinent right here.

There has been no motion before this court supported on any of those grounds that your Honor is now adverting to.

The Court: You are not quite accurate in saying that. Let's forget Adeline Skinner; her testimony, necessarily, was within a narrow range. The question Mr. Rose is presenting is whether this indictment was properly brought on Mr. Mainland's testimony alone. That is really what his point is. He has used the word "hearsay" in his argument about that.

Mr. Lucas: We must presume, first, the regularity of the proceedings of the grand jury; we must presume the regularity of the functioning of the United States attorney's office; we must presume the fullness and fairness of the consideration and deliberations of the grand jury. Every one of those things are inherent in the sovereignty of our government. We cannot speculate or even indulge in a presumption to the contrary.

If that is sought to be invoked or injected into a case, it must be made upon the strongest of proof. The presumption here is that Mr. Mainland gave to the grand jury [1174] the full and complete result of his investigation, plus the testimony taken by him under oath of Mr. Danziger, and that a



full and fair representation was made by Mr. Mainland before the grand jury, and that they acted with due deliberation; and any one attacking that must attack it not on idle assertion that it is hearsay or his or that or the other.

That is the government's position with regard to that.

The Court: You get ready, now, Mr. Lucas, beginning at 2:00 o'clock to talk about the government's case pretty fully. Mr. Rose has attacked it in its fundamentals. What I want to hear from you is in the scope that a closing argument would ordinarily be in, because Mr. Rose has laid out everything before us in his attack on the government's position. We will adjourn until then.

(Whereupon, at 11:55 A. M., an adjournment was taken until 2:00 o'clock P. M. of the same day, January 30, 1945.) [1175]

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Los Angeles, California,

Tuesday, January 30, 1945, 2:00 P. M.

Mr. Rose: With your Honor's permission, so that I can clear the record up, your Honor will recollect calling my attention to a letter in the files from the Trinidad Company to Dr. F. A. Stedcke, under date of March 24, 1938, the reference there to the paragraph of previous companies in drilling and handling had expended a sum of seven and a half million dollars. I have never recognized that a statement of counsel should be considered as a substitute for evidence, but—Clerk, will you please hand Exhibit A to his Honor?

I find, your Honor, upon examination of this Exhibit A, page 141, paragraph 6, which was filed with the S.E.C. under date of July 14, 1934, the declaration that 1,500,000 pounds sterling had been expended in the acquisition and early development of these properties.

Then on page 158 of the prospectus, approved by the Securities and Exchange Commission, Exhibit A, of the prospectus approved in that exhibit, under date of August 9, 1934, has the same representation in that.

And I thought I ought to call your Honor's attention to the state of the record in that regard.

Mr. Lucas: May it please the court and counsel, let us start in reviewing this testimony where the government contends was the inception of this scheme, and review what [1176] the testimony shows with regard to the devising of the scheme, and after discussing briefly the testimony of the witness Carter, turn to what Mr. Danziger says, and see if by his own testimony we cannot show the devising of the scheme.

Now we start with Mr. Carter in New York, he meets some friend who tells him that a friend by the name of Danziger is at the Barbizon Plaza Hotel and has an oil deal, and he is looking for a salesman.

Mr. Carter goes to meet Mr. Danziger and finds Mr. Davis or Mr. Koch in Mr. Danziger's room, and Danziger and Koch are talking over some matters pertaining to sales, sales literature, and for all that appears in the record, the inference is deduc-

ible right there that Koch was selling, or Davis, was probably selling out on this list of South American oils, or the all-American petroleums, or whatever it was. But, anyway, Carter is in the room and Danziger meets him, and they start to talk, and Mr. Danziger explains his deal after making some reference to the departed salesman Koch, and Danziger then and there admits that he knows the man is traveling under an alias, he starts to talking with Carter, and he shows him literature, and he tells him what he has, that he has got a deal, an oil deal, that is a rare thing, it is out from under the clutch and supervision of the S.E.C., that he has lists of old stockholders of two companies, he thinks there is money in the [1177] deal, and he tries to interest Carter into taking it up.

Carter listens to him and sees what he has there. Apparently he is at least sufficiently impressed to start out on a deal whereby he gets a commission for sales that he makes. But with the prudence natural to anybody he makes some inquiry about these rights, the so-called rights certificates, copies of which are in evidence, and he talks to Mr. Danziger about them. Danziger, in effect, tells him that they are a hocus-pocus, that the companies are defunct, that the stockholders are scattered, that the boards of directors are not there to make any complaint, and that he, Danziger, has written up these right certificates and, "When you go out on this sale you take some of these with you and fill in the name of the victim that you are calling on and the number of shares and see what you can

do.” A temporary arrangement is entered into right then and there whereby Mr. Danziger gives Carter a list of stockholders of the South American Oilfields, Inc., and the All-Americas Petroleum Corporation, which list is limited to people in and around New York City. And Mr. Carter goes out and comes back in four or five days and says the deal isn’t good, it hasn’t much potency, the people have been reloaded many times, lots of the addresses are not valid any longer, some of them are dead, “And those that I did get to talk to are not interested, they have been tapped too often.”

Danziger said, “Can you get me another list?” He didn’t care about what kind of a list it was. He wanted a sucker list, so-called. He said, “Can you get me another list?”

And Carter said to him, “Well, yes, I know another company, and I think I can get you a list, but how about this thing? This South American and All-Americas deal that you had, there wasn’t anybody to kick about it, but here this company has just folded up, but they have got a good stock list and they have a board of directors, how are you going to create this right stuff?”

Danziger said, “You leave all of that to me. I have been through this plenty of times. Don’t you worry about that. I am a lawyer, I will draw up the contract. You just bring me somebody that is the head of that deal, the head of that Great Eastern outfit, and I will cook up a deal that will be all right. I have found out in my experience that the success of any one of these things is the sales psy-



chology that you put around it and the attractiveness of it, so you bring me that man.”

And Carter went out and he produced Mr. DeHart in the course of time. And from then on we do not have to rely upon the testimony of Mr. Carter for the formation of this scheme and device to bilk the public. Fortunately for the prosecution in this case, there is in evidence in the form of exhibits documentary proof in the handwriting of the [1179] defendant Danziger himself that sustains and bears out every oral statement made by the witness Carter from the witness stand.

I refer your Honor to Exhibit 97 in evidence, which is on the letterhead of the Trinidad International Petroleum, and contains writing indisputably and incontrovertably in the handwriting of the defendant Danziger. It is a revision of the old letter that had been previously sent out to the South American Oilfields. This is prepared now for the Great Eastern deal, and we find in this first one, “We beg to acknowledge the details received from you with reference to your holdings in South American Oilelds, Inc.” scratched out and substituted in lieu of “South American Oilfields, Inc.” in the handwriting of Mr. Danziger, “Great Eastern Natural Gas Corporation.” It goes on down and we come to this wording, “in which your South American Oilfields Company, Inc., were formerly interested,” stricken out and in the handwriting of Mr. Danziger, “and oil and gas lands in New Mexico and other parts of the United States.”

They didn’t even confine it to New Mexico, though

there was some financial, some inchoate thing, an optional right, or something, that the thing was supposed to have had in the State of New Mexico, but here in his literature he is not limiting it to the State of New Mexico, but other parts of the United States.

Now, then, the next paragraph, "Because of such former [1180] interest this company has arranged with Wake Development Company, its underwriter, to extend to all South American Oilfields, Inc. and all Americas Petroleum Corporation stockholders a right to participate in any future profits," and so forth; that is stricken out and in the handwriting of Mr. Danziger there is appended the following: "This company is lacking in skilled personnel capable of handling the development and marketing of natural gas and being desirous of having the aid of Great Eastern Natural Gas Company in such connection it has entered into a contract with the latter to develop and market the natural gas which will be produced from our properties, and to market our petroleum products for us," and so on.

Now, you talk about a scheme and a device. The unctuous effrontery of that defendant to sit in a New York hotel room and concoct such a scheme as that with all of its implications, to go out in the mail, all in his own handwriting, amply supports everything that this witness Carter said about the formation of this scheme and device from that witness stand.

Now, that this is the handwriting of Danziger cannot be refuted.

Carter tells us that DeHart came up there and that DeHart and Danziger sat down and figured out this deal.

Now, if you want further proof of that, it is in the form of that contract which is introduced in evidence, the [1181] entire document which I am going to take the time to read at this moment, but this very language and the general outline of the scheme as told to us by Carter is contained in the contract.

So much for that for just the moment.

Now, if we turn to Exhibit 100, we find further documentary proof in the handwriting of Danziger of the truth of the oral testimony of Carter. Carter says the thing was concocted there up to the present form as I have outlined, then the contract is entered into and then Carter and Danziger get together on how they are going to bilk the public, and the sales literature that is going to go out, and the come-on correspondence that is going to be put in the mail, the lure and bait that is going to be flooded out to these Great Eastern Natural Gas stockholders. And in support of that oral testimony of Carter we have evidence in the form of Exhibit 100, which is on the letterhead of Trinidad International Petroleum, and in Mr. Danziger's handwriting, and it says—this is something that Carter said Danziger and he prepared, Danziger wrote out and he took to the printer, it was printed and thereafter mailed.

Now, what is this? A form letter. "Dear Sir: We thank you for your reply to our inquiry with reference to your stock holdings in Great Eastern Natural Gas property.

"A marketing and operating oil and gas contract is now in process of negotiation between this company and the [1182] Great Eastern Natural Gas Company, which if consummated the basis at present proposed would obligate the offering by our underwriter"—Wake Development Company in Los Angeles, I suppose—"of Trinidad International Petroleum of certain rights to Great Eastern stockholders. The inquiry in reference to our stock holdings was made in order to have our records complete so that we may reach you promptly in the event certain anticipated stockholders' rights shall be due you, providing the above contract is consummated.

"In view of numerous inquiries as to the personnel of our company we are pleased to set out below a list of the directors and management in active control of the operations of our company:"

Now, there follows those in active control and management. I am not going to read all of this, but there, I say, your Honor, in the handwriting and in the words of Mr. Danziger himself we have the scheme in the process—it is already formed in their minds, it is in the process of being carried out. A deal with the Great Eastern cooked up out of whole cloth, two men sitting in a hotel room, Danziger representing the Trinidad and the Wake, DeHart purporting to sign for the Great Eastern



Natural Gas Company, and a split of the proceeds.

While that contract, I believe—and if I am in error some one may correct me—provides that Great Eastern gets  $66 \frac{2}{3}$  of the sales price of the securities, in truth [1183] and in fact the  $66 \frac{2}{3}$  of the take from the public went to Carter to be allocated one-third for commissions, as he said, and one-third for expenses, and Danziger or the Wake Development Company got the other third; presumably, I take it, we might draw the inference that the boys in the Great Eastern were taken care of, DeHart, Palmer, whoever it was. Anyway, that is not of concern here.

Now, that is the hocus-pocus that is sent through the mail at the very inception of this scheme. What does Carter tell us about it? Carter says: After all that flood has gone out to these people, we took two or three hundred names at a time, we gave—the fast boys with the follow-up—we gave them a kit and turned them loose on these people personally, to give that final touch to extract the money. And I refer to Exhibit 103, which is on the letterhead of the Wake Development Company with the Los Angeles address. It bears a date at the top, August, 1935. Remember, Danziger is still in this country now, he is still here, he hasn't gone to Europe yet, and this is given, according to the witness Carter, to the boys who make the touch, and it says:

“To Whom It May Concern: The bearer of this letter whose signature appears in the lower left-

hand corner is an authorized representative of Wake Development Company and as such is empowered to receive checks, securities, money orders and cash for all transactions with respect to your 'Rights'." [1184]

What a horrible misuse of a wonderful word.

"Make all checks payable to Wake Development Company. Very truly yours, Wake Development Company, M. Bishop, Vice-president."

What does Carter tell us about that? When this literature typified by Exhibit 100 was being worked up, Carter says that Danziger rented a box at one of the post office branch offices there, under the name of Bishop, I think.

The Court: You say you think?

Mr. Lucas: I believe that is the name. I am quite sure it was Bishop. There was mention of the word—"Davis" comes in there, but I am inclined to believe that it was "Bishop."

And that the return mail came back to that box. And notwithstanding the fact that counsel argued to the court this morning that our friend Mr. Carter here didn't use this fictitious name until way late in the season, Carter's own testimony from the stand with respect to this exhibit says that, "C. Cameron is in my handwriting, that is the name I was operating under if I went out to reload these people."

And while we are on that alias subject, let's clear that up in its entirety. Danziger's testimony in the transcript, which I will get to in greater detail farther along, says that "The first month

I knew Carter in 1935 I knew he was traveling under an alias; it was either Carmen or [1185] Carter; I don't know what the name was in which the alias was, but I knew he was traveling under an alias, he told me so himself, he was having some financial difficulties, some trouble with his wife."

We have, then, Danziger right in the middle of the concocting of this scheme, not by his own testimony, so much, at the present time, but by his writing over his signature, as you might say, and what is the first hot deal they get? Let's just see how Mr. Danziger can explain this one away. We have got him in this deal now; he is waiting there now to go to Europe, and some of Carter's bird dogs go out and they make a touch. Carter has assembled his salesmen; they go out and they get ahold of a Mrs. Pierce over in South Amboy, New Jersey, and some fellow, I think the testimony is—and if I am wrong I will stand corrected—went out and made a \$600 sale to this woman, and it was called to the attention of this fellow Franklin or Kramer, and he said, "Oh, let me in on a deal like that; boy, I can go out and make a real touch; turn me loose."

And Carter, knowing this fellow, says to Danziger, "Listen, I just don't like that; I know this boy for a long time, he is fast, you can't hold him down, he just goes crazy, he makes any kind of a representation; I don't like to turn him loose."

Danziger, according to Carter, says, "Let him

go, I want to get out of here for England, turn him loose, let him [1186] go out there.”

And they did. And true to Carter’s prediction and admonition to Mr. Danziger, that boy came back with a four or six thousand dollar check, and he turned it in to Danziger, and then they cut it up, and the testimony is that Danziger got \$2,000 of it to help finance his trip to Europe.

Warned that the fellow was hot, that you couldn’t control him, but that he was a money producer, Danziger said, “Let him go,” and took his cut of the ill-gotten gains and went to Europe. And this man told him before he left,” “Listen, let me loose on that old woman over there and I will sell the whole issue,” and Danziger said it was O. K.

Now, they had had a hocus-pocus deal down there in Wilmington, Delaware, all right, about setting it up and giving it the semblance of regularity; but they had only escrowed, I think, according to the exhibit, 20,000 shares. But we will send Danziger to Europe and we will wait until this boy Kramer has a chance to work on that old lady over in New Jersey.

Carter, knowing the fellow, has got his eye on him. What happens? He gets away from Carter; I imagine that Carter isn’t just a dumb fellow, he gets away from Carter, and he goes over and touches this woman for a big chunk of money, I think the witness said \$36,000. This boy is smart, he is not going to cut Danziger or Carter in on that [1187] deal. When Carter gets wise to it he tries to smooth it out, to give it the semblance, at



least, of regularity and legality. But this fellow said, "No, I am holding it."

The fat is in the fire, the deal looks terrible. Carter wires or cables Danziger and tries to do what he can, and the record is clear that there was the utmost of freedom of expression from and to, back and forth, so that Mr. Danziger knew the full import of that deal, and as a result of that, something in the exhibits will bear me out, I am certain, this fellow is arrested, and Danziger, to protect himself, of course, cuts off the whole deal; he says to Carter, "Stop, hold the deal, you have got to quit that." So there is a cessation.

Carter fires his salesmen and picks up the deal himself, and he and Danziger, by a mutual exchange of correspondence and cablegrams—he then becomes the only active representative of that deal from henceforth on. And it is in the exhibits. There is a letter there, I forget which one it is, in which Danziger expressly lays it down to him how that transaction from thenceforward will be handled. "You send the money to Wake Development in Los Angeles. You handle all your deals out of there. You send stock certificates there. You do all of your business out of Wake Development Company in Los Angeles. My sister has got instructions to carry out my words and my direction in the matter." And from then on what do we find? We find [1188] Danziger in England, Mrs. Faulkner in Los Angeles, and Carter out beating the bush wherever he can find a victim.

That continued to exist and was carried out to

the utmost detail until Mr. Danziger came back from England.

Now, that there was complete understanding and concert of action between Danziger and Carter from 1935 until '37 is amply borne out, if the court please, by this correspondence from Danziger to Carter just before he leaves England. He writes from the Park Lane Hotel, Piccadilly, London, on July 1st:

“My dear Old Timer, I am leaving here for New York on Baltimore Mail Lines ‘City of Norfolk’ on July 12 and will be in New York on the 22nd.”

Those dates are important. We will assume the ship is on time, at least for the purposes of this argument, because it bears directly on some of this Parsons’ transaction.

“I may likely go to Barbizon Plaza but am not yet certain tho I will collect mail from there if I don’t go there.

“I want very much to see you—will not likely be in New York for over a week—possibly I can personally help with Parsons—or any one else.”

Now, I say Mr. Danziger had been in Europe two years, I say that the details of working the victims for their money was arranged and carried out—was arranged by Danziger and carried out by Faulkner and Carter in his absence [1189] through correspondence with them, but I say, further, that there was complete concert of action and knowledge

on the part of Danziger or he couldn't have written this before he left England.

The Court: How much money do you think was raised while Danziger was in England?

Mr. Lucas: In Europe? On the Parsons deal alone——

The Court: No; from '35 to '37.

Mr. Lucas: I have not checked that with Mr. Mainland.

The Court: How much do you think was raised all told?

Mr. Lucas: My recollection of my conversations with Mr. Mainland is that we estimate that this deal—that we have discovered, I believe, in this deal evidence to indicate that about \$75,000——

The Court: Gross?

Mr. Lucas: Gross, was taken, with a strong suspicion, I believe, on the part of the S. E. C. that they didn't discover everything.

Mr. Rose: May I interject an observation, your Honor? That statement has no foundation whatever. There has been an analysis of all these reports, income tax and everything else, and I say to your Honor that the Wake Development Company didn't, from the inception of this 1935 transaction up to the 1941 incident where Mr. Mainland was making his examination—your Honor will find that the gross acquired by Wake Development Company is around \$10,000 and no more. [1190]

I don't like to interrupt anybody in an argument, but I think he ought to try—he is drawing on his imagination as to what he thinks the evi-

dence shows, but when he starts giving your Honor figures, I think he ought to take the precaution to really find out something about it.

Mr. Lucas: I was trying to answer your Honor in the utmost good faith. Naturally, in the preparation of this case from a legal standpoint I haven't given too much attention to the detail of amounts. But take the witness Carter, \$36,000 I believe his testimony was, of Mrs. Pierce over in South Amboy, New Jersey, that money didn't go—no part either went to Carter or Danziger, but it was part of this transaction. If we take the S. E. C. figures, between twenty and twenty-five thousand dollars was the possible take on Mrs. Parsons. We have there over fifty thousand, and these others. I have never taken the trouble to sum them up, but I think I am safe in saying that when we consider those the deal runs in the neighborhood of \$75,000, one-third of which went to Wake Development Company and Mr. Danziger.

But to continue with this letter:

“I want very much to see you. Will not likely be in New York for over a week—possibly I can personally help with Parsons—or any one else. I would commit murder to get over a nice sale.”

Well, now, literally I don't contend that is true, but figuratively speaking Mr. Danziger was telling the truth. [1191]

Turn for a minute to what Carter said was said between himself and Danziger when he came back.



Danziger, according to Carter, said, "The deal hasn't gone good over there, I am broke, it isn't hot, I have got to get going. I can't stay here in New York long. Get out and get me a deal."

Now, if you believe that Carter was the most despicable liar in the world, you still wouldn't be in a position to doubt Mr. Danziger. He put it in writing. He said, "I would commit murder to get over a nice sale."

Now, while we are on that, let's just clean up that \$7,000 check. According to Carter, Danziger said to him, "Get up there and get ahold of that Parsons woman."

Carter said, "I have exhausted my imagination, Danziger, I can't think of another thing to go up there and reload that woman with. I have got to get somebody else with a fresh touch and with a fresh approach."

So he called upon his friend Dick Schraeder or somebody, Shaeffer.

The Court: Tracy?

Mr. Lucas: Dick Shaeffer. And Dick Shaeffer goes out and brings in Joe Robbins. And as Carter said, "We all planned it; Danziger, myself, and Shaeffer figured out the take on that poor old woman up in Pottsville, Pennsylvania." And they sent up the best that they could find to make the touch, to make that sweep that they wanted. Danziger had to have money. All right, what do they do? They send [1192] this man up there. And as proof of the judgment of Carter as to sending

somebody up there right, they come back with a \$7,000 check. Now, you can't deny that.

I marvel at the manner in which the government has been able to substantiate the oral testimony of this witness Carter.

The Court: How much did she put up before?

Mr. Lucas: There are two checks in evidence ahead of that, one for \$5,000 and one for \$4,000 that occurred while Mr. Danziger was in Europe.

Mr. Rose: Mr. Mainland is trying to correct you. There is a check for \$1,000 and \$4,000 which never saw the light of day, as far as Wake or any defendant. It was cashed by your favorite witness under the name of Edwards, and the proceeds deposited by him in an account maintained in that name.

Mr. Lucas: Thank you; but you didn't quite complete the testimony. And the testimony is that he gave a cut that was coming to Danziger to the Wake Development Company. And the proof of that statement is, as I said a while ago, a letter from England which says, "I can personally help with the Parsons matter."

Now, that is true, you don't find the stamp of the Wake Development Company on that \$4,000 and that \$1,000 check, but I do say that Danziger knew about it because of this letter. [1193]

That is why when he stepped off of that boat he told Carter, "Get up there and get that woman and get going, take that Parsons woman." And they sent up that fellow and he took \$7,000. And Danziger himself kept an eye that the Wake De-

velopment Company stamp of deposit is on that check.

Bear this in mind, if the court please, that Carter didn't cash that check; that check was cashed by the Wake and the cut made, and Danziger got his proportion thereof.

Now, let's see the malarkey that Danziger then gives to his old friend Carter, bearing in mind that this is a letter written between two conspirators at a time when there isn't——

The Court: Is that a Southern California expression you just used?

Mr. Lucas: Malarkey?

The Court: Yes.

Mr. Lucas: Yes, I think it is common here. I think your Honor catches the implication.

The Court: It isn't common any place else that I have lived in. Malarkeys are good people where I live.

Mr. Lucas: They are not people here.

He said, "I have a firm agreement with a nice house here to furnish TIP money for five wells and then later, after production, bring it out on the market. They are organizing a public company to take in some other lands and get their money, part of which will then go to TIP. [1194] The time has not been ripe of late to bring out the new issue, and I just can't stay here longer while they work it out—have been away from L. A. for much over two years and must get back there. But TIP is 'set' sure as you live, and some of these days will show you a nice company.

"I am sending this to Phila. and a duplicate to L. A. to send to you in case they have a better address."

That very expression there shows the utmost of intimate contact and exchange of views in correspondence between Danziger, Carter, and Mrs. Faulkner in Los Angeles.

The Court: Did Carter testify he was writing frequently to Danziger while he was in England?

Mr. Lucas: Oh, yes, he said there was always a complete exchange of correspondence.

The Court: Were there any letters from Carter found in the Danziger files turned over to the S. E. C.? [1195]

Mr. Lucas: None whatever that I know of. Where Carter wrote to Danziger in England?

The Court: Anywhere.

Mr. Lucas: Yes, all these notations about "old-timer" and these notations on letters back and forth——

The Court: No full letter, though?

Mr. Lucas: No full letter that I can recall. Because, remember, from 1936 on Carter was on the dodge, after his conviction in Illinois. That is a significant fact to bear in mind there.

"The 'president' "—the word is quoted—"will be glad to call on Parsons and explain the very encouraging results to date—I also have a name in New York that I would like you to call on who is already a nice shareholder."

Now, look at that. You talk about a scheme and a device. Up here he is just telling Carter the



deal isn't so good, things haven't been ripe, not time to bring out an issue, I just can't wait any longer, I have been away too long now, and the deal isn't going good; but when he gets to the double shuffle that they are going to give a victim, he says, "The 'president' will be glad to call on Parsons and explain the very encouraging results to date."

Well, if she had just got a hold of this letter and read two paragraphs above it, she would have seen what the encouraging results to date were.

Before he left London, even before he wrote this letter, he needed money; but he knew that Parsons' touch was a good one. He had his cut on it, that is why he knew it was a good one. He wrote Mrs. Parsons, and here is his letter.

"London, England. June 28, 1937.

"Elizabeth T. Parsons," and so forth.

"Dear Mrs. Parsons: It is pleasing to have advices from our California office to the effect that you have apparently added to your holdings in this company and I feel sure that your investment will prove very profitable.

"As you likely know I have, as president of the company, been in England for some time on business of the company and while I am not at liberty at the moment to give out any details I can assure you that Trinidad and this company have a brilliant future and we are doing everything possible to make a foremost company out of it. We are, sincerely yours, J. M. Danziger, President."

Now, there is just a masterpiece of nothing. As-

surance, double talk, bamboozling, any other flamboyant term that you want to apply to it; "I am not at liberty to give you the details, but I can assure you." That is on the 28th of June, 1937, and three days later, on the first of July, he was telling Carter just the exact opposite. [1197]

Mr. Rose: Mr. Lucas, doesn't that letter that you read to the so-called Mr. Carter, which incidentally is not addressed to him at all, doesn't it state that a deal had in fact been closed for the acquisition of 100,000 shares by this British company? Or are you trying to interpret between the lines?

Mr. Lucas: I see nothing about it.

Mr. Rose: You better read it again.

Mr. Lucas: When your turn comes, Mr. Rose, you can answer anything about it which you so desire. The exhibit is No. 105.

Let's connect up this deal with Los Angeles to get the picture; Carter in New York some place, Philadelphia, Danziger over in England, and the Wake Development Company and Mrs. Faulkner here in Los Angeles, and see what that brings forth.

July 16, 1937, that is 15 days after the letter Danziger wrote to "My dear Old Timer," and Alda Faulkner says to Carter,

"My dear Old Timer: I surely was glad to receive your wire today as I have some important things I want to tell you and have just been waiting for a definite address from you.

"On the yellow sheet attached I am giving you

copies of all correspondence had with Mrs. Parsons and I believe it is self explanatory."

That happened with all these deals, it runs through [1198] every exhibit, Faulkner supplied Carter with copies of all correspondence, and the Parsons' deal was no exception.

"I sent J. M. a copy of your letter in which you said you would probably write him suggesting a form of letter for him to write to her."

Talk about concert of action. There it was. They are all three in there ganged together to pick the victim. But the letter says:

"With the thought in mind that he would very shortly be returning to New York, he did not wait for the letter from you with the suggestions, but wrote Mrs. P. as enclosed copy on the pink sheet."

That is just what I read to your Honor, the president writing to Mrs. Parsons. Cooperation, concert of action to the nth degree.

"That brings you entirely up to date with all correspondence with her."

"Now as to J. M.'s plans. He left London on July 12th and will be in New York on July 22nd. He advises me that he wrote you to Philadelphia—I don't know just what address he used, but in the event you did not receive the letter from him, I enclose copy of his letter to be sent you if I heard from you in the meantime."

It shows you the precision and the effort with which these people worked to keep always in constant touch with [1199] each other. That circle was always complete, so that each would always

know what the other was doing. Copies of correspondence between Wake and the victim, copies of remarks made by Carter to the victims, and all are constantly circulating back and forth, as your Honor can see from just a half reading of those exhibits.

“O. T., what about this? Check with this. Answer this for me”, and so forth. Here is a sample that they had between themselves.

“The boat he is returning on docks in Baltimore on the 22nd but he will leave for New York the same day. He is not at all certain that he will stop at the Barbizon Plaza Hotel, but will call there for his mail. Will you have a note there for him on the 22nd telling him where he can get in touch with you at once. His plans are indefinite and he does not know how long he will be in New York and is very anxious to see you as soon as he gets there.” On that Parsons deal.

“I am mailing this today in advance of the receipt of the letter which you state you are writing—that will be received here on Monday, July 19th—and if it calls for any activity on my part, I will write you again immediately upon its receipt.

“Hope things are breaking for you. Sincerely, A. D. F.” [1200]

There is the concert of action to get together for a conference for a touch for a sale immediately upon that ship docking. All right. Now, then, we know the result of that. They went up and got this \$7,000.00 check, they split it, and Danziger came to Los Angeles, and from then on until 1942



or 43 the record is complete with the details of their mulcting the public; Carter the contact man, Carter making the touch, making the representations, apprising Danziger and Mrs. Faulkner of it, the exchange of correspondence, the sending of the money, and so on. Now, let's just take a few of those letters as we go along.

The Court: Until what date did you say?

Mr. Lucas: Sir?

The Court: Until what date did you just say?

Mr. Lucas: Until nineteen hundred—I think I used the expression forty-three, your Honor, and advisedly so. I have here and will refer to it in just a moment, the exhibit, the last few introduced on behalf of the government, that Mr. Danziger typed to his old friend Carter telling him—yes, here it is, the “Dear friend” typewritten letter, Exhibit 96, which the witness Carter testified he received, I think it was in June of '43, maybe as late as '44, but I think——

The Court: But so far as money is concerned——

Mr. Lucas: So far as money is concerned, the last record, I believe (of any money exchanged and split between [1201] them is in 1940. I think that is the Parsons' deal, the last money that was exchanged between them, the division of money in the Parsons' transaction occurring as late as December, I believe, or November or December of 1940.

Now, let's get along on——

The Court: It is now 3:00 o'clock; you can split the afternoon to suit yourself.

Mr. Lucas: I expect this will be a good time. I am in need of a drink of water.

(A recess was taken.)

Mr. Lucas: May it please the court and counsel, to refer to and finish up the correspondence that I referred to that was the last correspondence between Carter and the defendant Danziger, I refer now to Government's Exhibit 96, which I think the witness Carter said that he received in 1943 or possibly '44. In fact, I believe he said, if my recollection is right, he received this in '44, to show the contact between these people between 1935 right up to and long after the time of the indictment.

"Dear friend:"—

The Court: You don't need to read that; I remember it.

Mr. Lucas: Do you have in mind what I am talking about?

The Court: I remember the letter.

Mr. Lucas: Let's go to the exhibit, then, on this Parsons' transaction. We left them at the split up of this \$7,000.00 check in July 1937. We pick up Exhibit 85, and [1202] turning rapidly through that we find that on November 7, 1937 the secretary, Alda Faulkner, wrote Mrs. Parsons—and I do not read it in its entirety, but only to show you the contact that was kept up constantly by the Los Angeles office with these various victims to bulwark and fortify the work that was carried on by Carter. Bearing in mind that in July they

split this \$7,000.00 check of Parsons', of 1937, we now turn to November, the same year:

"Dear Mrs. Parsons: Your letter of October 23rd received and we are holding it for Mr. Danziger, our president, who will give it his attention when he returns to this office.

"We are, however, taking the liberty in the meantime in assuring you that, in our opinion, you need have no alarm over your investment in this company. Since it is evident from the tone of your letter that you are not very familiar with the general setup of this company we are enclosing herewith a booklet which was published in England and sent to English shareholders of this company in 1935."

And I want to parenthetically interject at this time the testimony of Mr. Mainland, that an examination of the books of the Trinidad Company showed that there were 500 shares outstanding in England. But if you hear this it is just drooling with the implication that they are many and numerous in England. [1203]

"If you will note the character of the management of Trinidad International Petroleum Ltd. Company we believe it will reassure you on the investment you have made in the company. Mr. Danziger, you will note, was for over 20 years associated with Mr. E. L. Doheny as a director and vice-president in all the companies comprised in the well known Mexican Petroleum and Pan-American Petroleum Transport companies." [1204]

Then it goes on and on and on in that vein

and comes down to that reference that your Honor had awhile ago, to the \$7,500,000.

“The investigation which our Mr. Danziger and his group made on the Trinidad International Petroleum Limited properties before becoming associated with the enterprise as shareholders and directors in active charge, disclosed that there had been invested in the acquiring, drilling and handling the Trinidad International Limited properties by previous companies in control of same some 7,500,000 shares——”

The Court: Dollars.

Mr. Rose: Dollars.

Mr. Lucas: Dollars. Thank you.

The Court: We wanted to be sure you got it.

Mr. Lucas: There, as I say, your Honor, when we speak of a conspiracy, when we speak of a scheme and device to mulct the public, and it is followed up letter by letter, assurance upon assurance, drawing upon the imagination, inuendo, reference, very seldom do we find a case, I take it, that has been so bulwarked with documentary proof.

Let's go to another one, as late as May, 1940. The next letter sent to this poor old woman, Mrs. Elizabeth Parsons——

The Court: How old was she, by the way?

Mr. Lucas: The record indicates she was 70 at the time Carter was contacting her.

Mr. Rose: In what part of the record is that?

Mr. Lucas: I shouldn't say the record; I should say investigation.



“Enclosed herewith you will find certificates of Trinidad International Petroleum Limited in your name as follows: \* \* \*

“Kindly sign the receipt enclosed and return in the self-addressed envelope herewith.

“Since these certificates are being delivered to you in advance of final payment”——

This is the nth degree now.

“——of the total amount due and since the balance amounts to \$940.00 we have prepared a note for this amount and dated it for settlement on June 15, 1940.”

Let me say that the record read in here in the sworn testimony of Danziger is that he typed the note himself.

As I say, the effrontery of this defendant to take and send a note through the mail—mulet this woman of the thousands that they did, and then send her a note in advance of the final payment to credit to her account.

“May 2, 1940.

“We are in receipt of your check in the amount of thirteen hundred and seventy dollars. [1206] This is to advise you that we are transferring 600 shares \* \* \* ”

There wasn't a year I don't think that they didn't hit her.

“February 8, 1938.

“We have your letter of the 5th inst. Mr. Edwards”——

and here is the touch—

“Mr. Edwards can be addressed through this office at any time.”

That was Carter’s alias with this woman.

“Mr. Edwards can be addressed through this office at any time.”

Can there be even the slightest doubt that as between Danziger, Faulkner and Carter, they were in constant touch at all times, and they recognized, to Mrs. Parsons, that Edwards was their man and was making the contact for them, and that she could reach him at any time.

Now, your Honor, let’s go to the McCoy deal, because to me the McCoy deal is so full of that which is most typical of the trickery and downright skulduggery, and unctuous effrontery on the part of Danziger and this Los Angeles phase of it, working in the closest cooperation with Carter and his cohorts, bearing in mind that in the McCoy deal there was the fellow Dawson, and I haven’t as yet adverted to this mythological person Winslow; bear in mind that Mr. [1207] Carter and Mr. McCoy both occupied the witness stand, both told about the McCoy deal.

The Court: What?

Mr. Lucas: McCoy was a witness here and he told us——

The Court: The mailman?

Mr. Lucas: Yes. He told us how Carter, as Baker, came and went into his pitch and gave him his come-on story about his rights either in the South McKenzie or in the Golden Quebec, or in

the Great Eastern—they worked him whichever stock the fellow happened to have—and how he told him if he hadn't exercised this right that he should get hot immediately and write Los Angeles and maybe it wasn't too late, it had been three or four or five years ago, and McCoy had received the word and notices, but he hadn't paid any attention to it, but if he really got going he thought they would condescend to take his money away from him. So he looked up the number of shares and wrote, and the touchoff was that "We will buy these notes back off of you, because you have the rights as a former stockholder in this old defunct company, to make this thing, to get both stock and notes of the Trinidad, and you will get \$10 par value there, and we will come along and take those notes off your hands, because you are the only one that can exercise that right."

So McCoy fell for the deal, bought six or seven hundred, and the promise was that by the time he got those and got them [1208] back they would take them off his hands at a profit, and then he would be able with that money to buy the second batch, and so on.

Carter made the contact, followed it up with telephone calls, and then Mike O'Brien, under the name of Dawson, came on out to keep the thing warm, and in the meantime McCoy is writing back and forth to Wake and sending in his money, sending his down money first, and then \$2,100 more, I believe, and then they send him draft attached some more stock, and that is the one that didn't

click. Let's just examine this correspondence briefly to just see how that deal was perfected, just how they could take one of these victims and put him through the mill and clean him and kiss him good-bye and go on to the next one.

The first letter is February 11, 1938 to Trinidad Petroleum Company, a carbon copy of McCoy's letter to Trinidad saying that he just heard the good news about the Great Eastern stock, allowing \$2 a share on it.

Then they write back to him on the back of that letter, and they tell him, "Some years ago this company made an offer, by means of a Right Certificate, to the shareholders of Great Eastern Natural Gas Company which entitled them to receive a credit of \$2 per share." Then giving him the old business about suggesting that he check his records, make sure he hadn't exercised this right before, they couldn't be in a position of letting a man exercise that [1209] right twice; also be awfully careful that he hadn't waived it, and whetting that victim's curiosity and desirability, and holding out the bait there that it was something real precious they were guarding. The time had lapsed, and yet they wanted to be just, if he hadn't been victimized before they would give him the opportunity now.

He writes back and says:

"I have looked up my records and cannot find any reference to this exchange being offered me for Great Eastern Natural Gas Company stock.

"I have looked up my stock and find I have 2,750 shares."



Boy, how they must have gloated.

"Let me hear from you at once in regard to this."

Now they say, in reply:

"We are not yet ready to give you our conclusion in this matter. It might be helpful if you would state definitely that you demand your right."

Now, there is the business at its best; there is where they are working on him with their device and scheme at its real functioning high-powered efficiency; giving him the old business, "State to us that you demand your rights." Insist on it to us that we mulct you out of your money.

So he takes the bait, hook, line and sinker and he comes [1210] back, sends them \$275, 10 cents a share on 2,750 shares.

They acknowledge receipt of it:

"We are this day in receipt of your check in the amount of \$275.00 which you tender as a deposit against your request to exchange your 2,750 shares of Great Eastern Natural Gas stock for 2,750 shares of Trinidad International Petroleum Limited stock and 2,750 units of preferential profit sharing notes."

Then he writes them a letter. By this time he really thinks the business is something, because he goes from handwriting to a typewriter.

"I am enclosing herewith check for \$1,825.00 payment on 700 shares of Trinidad International Petroleum Limited and 700 preferential profit sharing notes of one pound each. Allowing me

credit for \$275.00 advance payment makes a total of \$2,100.00.

“I am also enclosing the following certificates of stock of Great Eastern Natural Gas Company, Limited, registered in my name as follows:”

giving the number of the certificates and the number of the shares, and so forth.

They acknowledge receipt of the \$1,825, and they thank him. [1211]

Now, on the 26th of March he writes them in his own handwriting,

“Send the 2,750 units of stock and notes with a bank draft attached for the balance to the Union National Bank of Cadiz, Ohio.”

In the meantime, Dawson has been down, Mike O'Brien, under the name of Dawson, has been giving him the buildup and telling him to send in for the balance of it, let the thing come out, let the demand come from Wake with a draft attached, and they are going to be there and take him up, and it is just like that, he will get the money and he won't be out anything at all. That is the story. But when the day came and the draft was there and they weren't there—you see, they figured to call him on the phone and tell him, “You pick it up and we will be down there tomorrow and take it off your hands.”

“Pursuant to your request of the 26th inst. we have this day sent to you through Union National Bank of Cadiz certificate for 2,750 shares and preferential profit sharing note for 2,750 units of Trinidad International Petroleum Limited in your

name; together with sight draft in the sum of \$2,562.00.”

Now, McCoy replies. Here is where you see so clearly just how these people victimized the unfortunate and the [1212] unwary. He says:

“Gentlemen:

“Am sorry to cause you so much trouble, but when I mailed those instructions to you, I was told I could have the money to cover draft.”

This is the letter to Wake.

“We wouldn’t find it listed any place as to value, the bank wouldn’t loan any money on it. Otherwise the money would have been ready. So if you send me the paper with the London market in it the bank will cover the draft, so they told me.

“Yours truly,

“Harold J. McCoy.”

There we have a written confirmation of the workings of Carter when he made a call on these victims, bearing in mind that he told you that to begin with in the early days of this deal in ’37 and ’38 Danziger, from England, had sent him a copy of the London financial papers showing quotations on the London market of listed stock, many of which contained names with the word “Trinidad” in them. And when they called upon a victim and were giving him the story, a quick flash of the newspaper out of their pocket, a hurried running of the finger down the list, a seeing of the word “Trinidad” or “Trinidad leaseholds” or something else, a quick folding [1213] of the paper, and back

in the pocket, and the victim is right in their clutches.

Now, this poor fellow who has been trimmed out of \$2,100 or \$2,200 at the time he writes this letter, he says: I am sorry. I am sorry I can't fall and let you get me for some more.

Because why? He believes the stories.

And we have written proof that when Danziger sent that paper and said, "I have no doubt you will find it useful," we know that Carter did find it useful, that he used it according to his own testimony on almost all occasions and supplemented it later by the purchase in New York of more recent issues of the paper, and here we have written evidence from McCoy that he worked it on him.

Now, then, the poor fellow is there believing that they will just send him the newspaper containing that listing and the bank will give him the money.

They write back to him, though, and they say: "Dear Mr. McCoy:

"According to your instructions we mailed you 2,750 shares of Trinidad International stock and notes with draft attached for \$2,562.00 to the Union National Bank of Cadiz and this draft was not honored and returned unpaid. It was also our understanding that when this draft was forwarded that we would receive the [1214] difference of \$3,588.00 which together with the \$2,562.00 completed the payment of your debit balance. Since you have not taken up this draft we are delivering you herewith 700 shares and notes as originally contracted by your letter of March 12th and which we confirmed upon your payment of \$2,100.00.



“We are enclosing certificates for 700 shares and notes and you are granted 30, 60 and 90 days in which to complete your payments according to the terms outlined in your letter of March 12. Your balance due in order to complete full payment is \$6,150.00.”

Boy, they were really going to make the touch on him.

“Should you desire to complete the payments sooner you of course may do so.

“May we suggest also that if at any time in the future you desire any information concerning Trinidad International that you address your inquiry to us and we will always be pleased to give you any information available.”

And undoubtedly they would have been, and it would have been very reliable.

Then he comes back and he says to Wake Development Company, under date of April 23:

“Gentlemen: [1215]

“It's been about two weeks since Baker and Dawson had me send in and have that stock sent out on a sight draft, and then played off on me and wanted me to lift that stock after having claimed that Baker had \$3,400 and Dawson \$137.50 wired out to your company to make the balance \$2,562 due on that stock. I sent telegrams to addresses given me and found them to be fake addresses. Nobody living there by that name. What happened to the shares and money that Dawson and Baker wired you, that left the balance \$2,562.00? I asked you about the market price on this stock and notes, but

you failed to mention anything about them. Let me know at once where they are listed and price.

“Yours truly,

“Harold McCoy.

“Baker and Dawson caused all this trouble for me and you seemed to be in touch with them all the time.”

Now, here was a fellow that was finally waking up, and he told the truth. I mean his observation was correct: “you seemed to be in touch with them all the time.” And doesn’t the record bear out the truth of his remark? Weren’t they always in touch?

But get what the president, Mr. Danziger, says to this poor fellow who has been mulcted. And it is explained to Danziger how the mulcting was done, he can’t deny that, he had word of it, he knew it, and he was accused of being in touch with them, and let’s see what this fellow said to this poor victim:

“Harold J. McCoy:

“Your letter of the 23rd”—that is the one I just read—“duly received. We also have received from Corporation Trust Company your letter to them of April 16 which they have forwarded to us.

“Our understanding of the business with you was that upon the payment of the draft on you for \$2,562.00 the balance of \$3,538.00 would be paid immediately. This was guaranteed by our Eastern representatives.”

Who are they? None other than Mr. Baker and Mr. Dawson. They were the people who called on

him, people who were in touch with him at all times.

“Otherwise we would have never permitted the shipping of the stock all the way to Cadiz even at your request.”

What a risk they ran putting that worthless stock in the mail. We would have never done it except for what you said and what our Eastern representatives guaranteed. [1217]

“When the draft was not paid by you we were informed that the \$3,538.00 payment would not be paid, and since we had received no payments except the \$2,100.00 direct from you by check we then had no alternative than to deliver to you the stock under the original contract which you stipulated when you made your payment.

“We are not familiar with the various details of your negotiations with a Mr. Baker and a Mr. Dawson and your letter is not clear to us. Do you mean to say that you paid over \$3,538.00 to a Mr. Baker and a Mr. Dawson which they in turn should have sent to us?”

You don't know whether he really suspects that Baker and Dawson are giving him the run-around or whether he wants to create in the mind of the victim that he suspicions that that is the fact.

“We quote from your letter as follows:

““What happened to the shares and money that Dawson and Baker wired you that left the balance of \$2,562.00?”

“What shares are you referring to? Did you deliver some stock to them, and if so, what was it? As we previously stated we never received the

\$3,538.00 but we were assured that our representative in the East [1218] has this amount deposited or the payment of same was guaranteed when the stock was delivered to you and the draft of \$2,562.00 paid.

“Will you kindly write us the fullest details of your dealings with these people; what you delivered to them; what addresses they gave you; a general description of the parties; copies of any letters or receipts from them. From your letter it is evident that you became dubious of the character of your negotiations after you were unable to get in touch with these men you were dealing with. It is unfortunate that stockholders often go outside their own company to get assistance and information which they can just as easily receive from the company for the asking.”

Here is the real nth degree of it:

“The Trinidad Company is managed by men of prominence and stability in the oil business, all successful in that field before ever taking over the management of the Trinidad Company. It is our belief that the future prospects of the oil industry in Trinidad, British West Indies, is most bright and that the oil business [1219] there is in its infancy and that the stockholders of our company will reap their share of this prosperity and gain more than by selling their shares at this time.”

And so on and so on.

Mr. Rose: What is the “and so on?” Why don’t you complete it?

Mr. Lucas: You will have your turn.



Mr. Rose: No; this isn't a debate.

Mr. Lucas: Poor old McCoy comes back with this:

"To start with I didn't know there was such a company as the Trinidad International Petroleum Limited or the Wake Development Company until this man Baker came to Cadiz, Ohio, and said he was looking up everybody that had stock in the Great Eastern Natural Gas Company."

That runs right on back to July, 1935, before Danziger left for England when that Great Eastern Natural Gas deal was cooked up. Here we have it three years later in Cadiz, Ohio.

"As they had a right to trade in their stock for this other stock, meaning the Trinidad and the preferential profit sharing notes.

"He says there was a man by the name of A. R. Winslow who was out in Los Angeles that [1220] was looking out for the welfare of the Great Eastern Natural Gas Company stock. They had been thinking about charging 20 per cent on each share of stock, but there were so many more that had this stock, meaning Great Eastern, that they cut it to five per cent for each share."

Then he goes on and explains the detail of this business. I am not going to bore your Honor with all of the rereading of this letter, because your Honor has already assured counsel that you have read these exhibits. But this man McCoy goes on here and he sets out in detail the number of shares, how the deal was, when the 700 shares were first put up, how they were going to take these profit

sharing notes, Baker told him this, and the whole picture; we could get all of it, it is all here.

As I say, to me here is one of the typical deals that's explained by this witness from the witness stand, that was written out by him in his own handwriting and sent to Danziger, and in which he pleaded that he had been defrauded, that the record shows that Danziger was in touch with them at all times, and wouldn't he please, now that it had been called to his attention, that McCoy had been defrauded, wouldn't he give him back his money? And Mr. Danziger in that correspondence brazenly defies this fellow, pretends not to know anything about it, doesn't know who Baker is. [1221] I tell you, your Honor, here is further corroboration of the story as Carter tells it from the witness stand, and this comes into this court partly from Danziger's own file, and from Mr. McCoy himself, and he is here in the court room now, in his own handwriting, he occupied that witness stand and he corroborated everything that Carter tells us.

So I say this is one of the clearest demonstrations that we have of the skulduggery that this man Danziger played upon each of these victims.

Now, in this particular file we do not have many exemplars of Mr. Danziger's handwriting. There is some of Alda Faulkner's. There is some of Mr. Danziger's handwriting, according to the witness Carter, on the letter, on the carbon copy of the letter from Wake to McCoy under date of April 29, 1938. There is this significant thing. The McCoy letter of May 6, 1938, Danziger's handwriting "Copy

to Wilson May 9''; showing again that close concert of action that existed. The reference to our Eastern representative, and some further handwriting there I will not comment on because I am not certain whose handwriting it is, and I do not recall the testimony on it.

I want, before the hour grows too late, and the patience of my listeners exhausted, to get to the testimony of Mr. Danziger himself. Let's see, hurriedly, what the record contains from Mr. Danziger, and I make hurried references to the sworn testimony. [1222]

He said that he had held the office of president since 1933; that the company, Trinidad, was organized to take over oil leases in Trinidad; that Hill, Gaskin and Allahar were from Trinidad; that the Standard Mining Company, a New York corporation, was controlled by Hill; Allahar assigned all his contractual rights to the company; Standard assigned to Rouse, and Rouse assigned to T.I.P., Trinidad International Petroleum; that the contract was made on 200 parcels of land; that the original documents signed by Rouse are in England; all papers concerning the deal were left with the lawyers in London; the London deal was never consummated; no rental payment of land until company qualified to develop the properties in Trinidad; Standard Mining Company never did obligate itself to do anything; I investigated Hill thoroughly when I went to England and found that he sold his own stock and put the money in his pocket. It was through Wake Development to furnish American

management. Shares of T.I.P. were divided as follows: 500,000 in treasury, 335,000 to Hill, Gaskin and Allahar, 165,000 to Wake Development Company. My services are to be rendered in the actual field operations. I accepted office of president or chairman of board and have occupied that position ever since. I am president of Wake. Mrs. Faulkner, my sister, was secretary, and my right hand until 1939, when she died. Arrangement with Great Eastern Natural Gas and Wake was such. Purchase price arrangement [1223] is to be found on page 20. I returned from Europe in July, 1937. Carter or Carmen did all the selling for Wake while I was in Europe.

There it is in his own words, sworn to. Carmen or Carter did all the selling for Wake while I was in Europe. There can't be any doubt about it.

I told Carter that there was flowing oil on the property. I told him Trinidad stock was not listed. I am sure I never told him there was a listing of the stock anywhere. Money received by Wake for T.I.P. stock sold by it was used for Wake purposes. Trinidad International Petroleum has never had at any time the finances to exercise any rights. I never had any intention that money for stock sold by Wake would be used to develop Trinidad. The same or similar deal that was given to Great Eastern Gas was given to stockholders of South American Oil Fields Company and All American Petroleum Company. I offered the same deal to stockholders of Golden Quebec in 1937. I went to Europe after July, 1935. Mr. Carmen brought Wins-



low to my hotel. Up to that time Carmen had been acting as sales agent to interest Great Eastern stockholders in Trinidad stock. He told me he had been convicted in Chicago and showed me his brief on appeal. At that time the Great Eastern contract was in default. I met Winslow twice, he bought stock the second time. Usually stock bought by the individual was paid for by him. I would say that there was [1224] no conversation with Carmen about Golden Quebec. I have never seen Winslow since I met him in New York.

During the first month I knew Carter he told me of the use of the name Carmen. I have not heard from or seen Carter since July, 1937.

All the securities that I took in on deals were worthless. I would have been willing to sell Trinidad stock for cash without the securities. Taking in this worthless stock was merely a device used to sell Trinidad stock.

There is a confession in his own language of his guilt.

Mr. Rose: Is that his language?

Mr. Lucas: That is his language.

Mr. Rose: Where is it?

Mr. Lucas: Page 47.

We will not create the idea but we accepted it. Great Eastern and All American had a questionnaire that went out to their stockholders and came back to us. The only records of any kind that Wake kept were a check book and a minute book. The directors of Trinidad——

Mr. Rose: Listen, counsel, I can't permit myself

to sit by here and have you purport to be reading to a court of the United States from a transcript and misread it the way you did.

You have directed our attention to page 47, and the statement there is:

“Well, I would put it another way. When Mr. [1225] Mainland speaks of a device, they were a formula or device used by the Great Eastern people selling this stock to aid them in selling the stock.”

That is a far cry from what you are supposed to be reading.

Mr. Lucas: I was reading from a digest of it.

Mr. Rose: If you are going to read from a record—you are supposed to be representing to his Honor you are reading a statement made by a defendant—I think you ought to be a little more cautious.

Mr. Lucas: I think the court understood exactly what I was doing, but I will read in now word for word, counsel. Starting on page 46:

“Q. The price at which you offered your Trinidad stock to these people was the price at which you would have been glad to sell it for cash without any surrender of stock?

“A. Yes, I would have been willing to. There have been times when we would have been very happy to do so.

“Q. As a matter of fact, from your standpoint the rights were merely a device to assist you in selling the Trinidad stock, weren't they?

“A. Well, I would put it another way. They

were a formula or a device used by the [1226] Great Eastern people, selling this stock, to aid them in selling the stock.

“Q. I am referring not only to that deal, but to the other deals.

“A. Well, I don’t like the use of the word device, but they were conceived and prepared and used by the organization or the individuals who were selling the stock. We didn’t create the basis or suggest the idea.

“Q. You accepted the idea?

“A. We did.”

Now, if I may proceed without further interruption.

I only know A. L. Roberts by correspondence. He did business for us in the East. He was a representative of Wake. I have never discussed Trinidad——

Mr. Rose: Are you reading from the record now?

Mr. Lucas: If you interrupt me again I will ask the court to admonish you.

Mr. Rose: You can’t threaten me; I don’t threaten very easily. If you don’t know that, you will find it out.

I can’t tell from my position here whether you are purporting to be reading to the court the statements made by the defendant or whether it is your summation as you made it in some notes, and I think both the court and myself should be made privy to that, because if you, from now on, purport to be reading a statement made by the defendant I certainly [1227] want to follow you in this transcript.

Mr. Lucas: Has the court any doubt about what I am——

The Court: That is your own summation now?

Mr. Lucas: Yes, a digest.

Mr. Rose: As long as he says that, it is different, your Honor. Frankly, I didn't know, but I couldn't reconcile his summation with the record here.

Mr. Lucas (Continuing):

That is my signature to each of the three letters. I signed them. I signed the name of A. Faulkner. I typed the letter dated July 27, 1938. The two letters dated March 28, 1940 and April 22, 1940 and signed with the name A. Faulkner, are both in my handwriting. My sister died in September, 1939. I mailed those letters to Hazelton. I do not recall the details of the letters of March 7, 1940 to Hazelton. I wrote that letter about having an Eastern representative call. It would not be Carmen because I did not know where he was.

Mr. Roberts was selling at that time but I did not ask him to call on Hazelton.

The Hazelton letter dated March 7, 1940, I dictated to a secretary by the name of Barager.

The Trinidad has never sold any oil. I know of no sales of T. I. P. except those of Wake Development Company since 1937. I know of several stocks listed in London with the name Trinidad as a part of their corporate name. [1228]

The letter to Mrs. Florence Lawyer dated November 13, 1939, was dictated and signed by me. She surrendered her mining stock and sent in her money and we mailed her stock and notes of Trini-



dad. Aronson whom I knew for years bought that stock and put it in the name of Elizabeth Parsons.

What a laugh.

(Continuing): The stub and certificate are correctly issued. Aronson paid for the stock by check or money order. I had had contact and correspondence with Aronson off and on since I met him years ago. Aronson was paid a commission on the sales he made, one sale in Seattle and one in New York.

The Edwards transaction is in either the journal or the ledger, it is not entered.

I have had no correspondence directly with Mrs. Parsons. My secretary replied to Mrs. Skinner under my instructions and perhaps signed my name—she had plenty of authority to do that.

The check of Mrs. Skinner dated September 12, 1939, represents the payment made by Mrs. Skinner for the stock. The letter signed B. J. Lehmkuhl containing the notation "O. T. We have not answered this. Please instruct," is in my handwriting. The other notations on the back of the letter I know nothing about. I do not know who "O. T." is. My guess would be that O. T. was some salesman my sister had corresponded with. I have no idea who O. T. is. I [1229] have never written to O. T., to my knowledge. I don't know the fellow in Lima, Ohio. If O. T. is a salesman and made a sale and has compensation coming to him, Wake would pay him.

The letter from F. A. Stedke, Lima, Ohio, shown witness with notation "Original to C." I would guess "C" refers to Carmen. I was not having any

contact with Carmen in 1938 or any communication after I saw him in New York in 1937. I have not transmitted any funds to him for any purpose since 1937.

The note of Mrs. Parsons which you show me was prepared by me on Aronson's instructions. I do not know if the note was paid.

The letter dated February 8, 1938, signed J. M. Danziger, Chairman, on letterhead of Trinidad was signed by me and I caused it to be mailed to Mrs. Parsons.

The Mr. Edwards referred to in the letter was probably tied up with Winslow. I don't know him. My impression was that I had no correspondence with Mrs. Parsons until you showed it to me.

I wrote and mailed the letter of August 10, 1940, signed Wake by C. Postal; it is in my handwriting. The \$1,000 referred to in the letter is probably in payment of the stock. The money was put into the bank in the Wake bank account. None of it was paid to Edwards. We didn't sell Mrs. Parsons any stock. Aronson probably told her to [1230] send the money in. I do not know Mr. Edwards. He is probably some contact of Winslow's. We had no direct contact with Mrs. Parsons. Winslow's first sale was to Mrs. Parsons. The check for \$1,500 dated December 16, 1940, and signed by Mrs. Parsons, was received by Wake and deposited in the bank. I do not know what it was for. No stock was ever issued to her for the check—we sold her no stock for that check. Wake deposited and sent the money. The \$4,810 Wake received from Mrs. Par-

sons in 1940 was evidenced by 500 or 600 shares of Trinidad. I do not know that Edwards is Carmen, nor did I ever suspect it. Carmen told me he was convicted in Illinois. I saw his brief on appeal. The check of Mrs. Parsons dated October 5, 1940, for \$157.50 I deposited to Wake account but I do not know what it was for. Of the \$4,810 sent in by Mrs. Parsons, Wake kept \$1,950. Wake kept no record except the check stubs. Aronson was here ahead of the time Mrs. Parsons' check came in. Carmen had a deal with a Mrs. Elizabeth Pierce. The proceeds of the \$1,370 check went to Aronson.

The note for \$940 and the check for \$1,370 are part of the same transaction.

My records show we only retained \$1,950.

I assume Edwards is Edwards.

The records indicate that Wake received in 1940 the sum of \$4,967.50 from Mrs. Parsons. Of that sum Aronson received around \$3,000. Aronson came to Los Angeles once [1231] in 1940. I have the impression of sending Aronson money. The only address I have for Aronson was Brockworth and Company, New York.

Last week I remember saying I had no address for Aronson.

I do not know a Mr. Carlton, I do not know anyone by that name. We took no precautions against unauthorized persons coming in on the deal. We cleared the \$7,000 check of Mrs. Parsons for Winslow. This transaction happened while I was in New York. I gave Winslow the greater portion of it. Winslow negotiated with me before he told me

that he had a deal closed. He was rather cagey. Carman had no part in this deal. Edwards figured in the deal with Winslow.

I never had a separate deal with either Mrs. Parsons or Edwards. I had no communication from a person named Carlton in December, 1940. I have no recollection of the transaction.

A telegram of December 8, 1940, sent to George Carlton, care of the Western Union, and signed O. T., I have no recollection of sending it.

Now, on the deal in which these representations were made——

The Court: Do you want to finish this afternoon?

Mr. Lucas: I would like to, but frankly, your Honor, I am getting tired. I can go on for a few minutes more; [1232] I see it is only 4:00 o'clock.

The Court: No need to go on at all.

Mr. Lucas: Just let me finish the thought I have in mind here, your Honor, and then I will appreciate your consideration.

The Court: How much time will you want in the morning?

Mr. Lucas: Five minutes more.

The Court: In the morning, to finish?

Mr. Lucas: Not more than 20 or 25 minutes, your Honor.

Let's just go to what this man Danziger told Mr. Mainland about this wonderful English deal in which he was selling stock, bearing in mind that the record shows there was only 500 shares outstanding in England, that Trinidad International



Petroleum Company never had a dollar in the bank, that Mr. Danziger said that he was hard pressed and broke when he came back; he is telling these people about the wonderful deal of Trinidad, how they should hold on to their stock, the president and all the officers are a bunch of great men and this, that and the other.

Now, when he had a chance to speak the truth to Mr. Mainland, Mr. Mainland is trying in apparent fairness to get him to tell the story about what was done over in London, and Mainland says to him:

“Q. It isn’t quite clear to me why those documents are in London. Would you go over that again? [1233]

“A. Yes. Well, I went to London some time several years ago to pick up the threads of some financing for the company that Mr. Hill had undertaken and I took with me all of the base title records of the company and made a contact there ultimately with a concern that was headed by Colonel Nicholson, the technical name of which escapes me at the minute. We entered into an arrangement where they were going to furnish the company the money to drill different wells and incident to that arrangement we submitted to their solicitors all of the title papers bearing on our property rights, and when I left London those things were left with those solicitors.

“Q. At the time you left London was that deal still alive?”

There is a question that is calculated to bring

out a clear-cut answer from a man who is in a position to make a definite and specific answer.

“A. Yes, it was still alive and yet it was—they were to furnish the money in the future at some subsequent time. I didn’t close the arrangement to completion where they were actually handing over any money.

“Q. You had merely interested them? [1234]

“A. No, they had agreed that they would do it, but they were to do it in the future.

“Q. What was the contingency upon which they were to go ahead?

“A. Well, no, there was no contingency. They were going ahead. They were going to do some financing to provide the money. They were merely underwriting and they were going ahead to raise the money in some form like a security house would raise money.

“Q. Had you discussed with them a definite plan at that time?

“A. Oh, yes. Yes, we had a verying definite plan. The details are not in my mind at the minute. I would have to get into some files to give you the details, but we agreed upon a definite plan under which they were going to furnish me money to drill different wells. They were going to furnish a sum equal to \$75,000 in American money.

“Q. I would like to know just what you meant by the statement that they would furnish money some time in the future.

“A. Well, I mean they didn’t furnish the money before I left London. I closed the agreement with

them, we will say, today and it [1235] provided that—our understanding was that they would go in the immediate future to get the money from their clients in some form. Just what form that was, I don't know. I mean how they were going to get the money from their clients I don't know. They agreed that they would furnish the company \$75,000 or its equivalent in pounds.

“Q. In consideration of the \$75,000 what were they to get?

“A. They were to get stock. They were buying treasury stock of the company.

“Q. And the result of that was what?

“A. It has never been consummated. I also had another arrangement with the same people involving the Oil Royalties Investment Trust, Ltd., and that arrangement, I guess, was, we will say, just floated out on the waves after I got out here due to some circumstances that I won't go into at the moment, and the Trinidad arrangement just didn't mature.”

Now, talking that in the light most favorable to Mr. Danziger, the fact remains that in 1935 when he came back from England the deal had floated out on the waves. It just didn't mature. But five years later in December and November of 1940 glowing letters are being written to Mrs. [1236] Parsons about this great Trinidad International Petroleum, and they are still taking money from her, when, as I say, your Honor, the record here is complete that when he returned from England in 1937 he couldn't wait any longer, as one of those

previous letters said they weren't raising the money, the market wasn't favorable to new issues, and it had floated out on the waves.

Now, your Honor, if I may be excused, then, until tomorrow morning, I will really appreciate it.

The Court: Yes.

(Whereupon, at 4:10 o'clock p.m., January 30, 1945, an adjournment was taken until 10:00 o'clock a.m., Wednesday, January 31, 1945.)

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Los Angeles, California,

Wednesday, January 31 1945 10:00 a.m.

The Clerk: United States vs. Danziger.

Mr. Lucas: Ready for the government.

Mr. Rose: Ready.

Mr. Lucas: May it please the court and counsel; a few minutes more will be all that is necessary, I think for me to at least touch generally upon a few of the remaining phases of the government's case in general.

First I want to revert back for a moment to the closeness of communications which existed at all times between Mr. Danziger and Mr. Carter and disclosed not only by the testimony of Mr. Carter but by the irrefutable testimony of Mr. Danziger himself.

I refer now to Government's Exhibit 55 in evidence being a letter written by Mr. Danziger to Logan Lindley, Deputy District Attorney in Los Angeles, which contains on the bottom thereof the



notation in handwriting "Copy to OT." I remind the court that that was one of the documents that was examined by the expert and which he stated that was in the handwriting, in his opinion, of Mr. Danziger.

There is also another phase of the case that I have not as yet touched upon; that is made quite manifest from a reference to one of the exhibits, namely, 85-B which I have before me, being a part of the exhibits that touch upon the Parsons transaction. The top letter of this exhibit has the [1239] supporting data that Mr. Carter testified to with respect to the code that was originated between these two men, by which they could carry on their correspondence and keep the names of their victims more or less unknown. Mr. Carter testified about that, and many of these exhibits have on them the working out of the code with reference to the name of the victim. Here on the one which I have in front of me there has been sent to Mr. Carter the typewritten copy of a letter from Mrs. Parsons to Mr. Danziger, and the typed copy says "Elizabeth NYPQMLQ," which worked out according to the formula testified to by Mr. Carter spells "Parsons," Elizabeth Parsons.

Above that letter is a letter to the Wake Development Company by someone of the name of Thompson, because under the words "Very truly yours," we find "RFMK"; and Mr. Carter told us that that was a variant of the code he worked out, or else the code that was devised or found, picked out by Mr. Danziger.

As I say to your Honor, I don't want to refer to every one of these exhibits that contain those code notations, but many of them do. This particular exhibit which I have in front of me contains the handwriting of Mr. Danziger in the following:

"Sat. noon OT, nothing in up to Sat. noon—Bank of America phoned they have an Eastern inquiry as to market value of TIP—— [1240] I said I knew of sales in NY and abroad at around par \$5. Hope for some luck for us all—Regards JMD."

Now, before concluding this phase of the argument I want to refer to Exhibit 95, which is part of an exhibit, some of the dates of which are December 4, 1939 and November 4, 1939, the particular exhibit which I have in front of me says:

"Tuesday the 6th."

This letter, to me—and this is one that the expert testified was typed on the same machine as the others that he used as exemplars—is a letter from Mr. Danziger to Mr. Carter, written in the latter part of the year 1939, prior to any testimony by him taken before the Securities and Exchange Commission, and while the scheme was still in active operation, long after a time when he knew that the deal originally conceived or dreamed up by him had become utterly valueless. He says this to his friend Carter; first he tells about the death of his sister and makes some personal comments about himself and his sister, then he says:

"It is a pity that we can't get organized to set a deal in Canada on TIP by means of a sublease."

All of this hocus-pocus that he had been working

with contracts, contracts upon contracts or assignment of contract, and so on, pyramided or transmitted or cut around, [1241] contracts as he says in his sworn testimony. Now, he says it is a pity they can't get started on a sublease.

"There are restrictions on new issues there by foreign companies but with TIP it is a colonial deal and with a Canadian company it is a natural now especially being oil."

The war in Europe had started, and he says it would be a natural being oil.

"What a plea that has during wartime. A new setup would give control of all the stock of the new concern so that a protective market could be made on some small exchange. There ought to be some Canadian broker that would fall for such a deal and provide the money to set it up—if you could get a line on some broker maybe I could open it up by mail and then if necessary to close it I could get to Canada—I can always flag some carfare someway if the game is worth the candle. Think along this line. Be of good cheer. Maybe Xmas won't be so lean."

Now they are even setting up a new deal. Carter was acquainted in Canada, had many connections there; this South McKenzie, this Golden Quebec were Canadian concerns. He had been back and forth into Canada, all of which was well known to Mr. Danziger, and he says: What a pity that [1242] we can't get started because it would really be hot stuff now, it would have an appeal in time of war.

After he had typed that letter he wrote in his own handwriting on the edge thereof:

“Any sublease by TIP to a new company would leave TIP as is and continue any TIP sales. It would be in a position of having a fine tenant on its property—all or part.”

So, I say, your Honor, that the record here is fairly in support of the allegations of the indictment in every respect, both as to the formation of the scheme and device and as to the concert of action between Mr. Danziger and Mr. Carter. And, incidentally, I want to say that it was definitely brought out on cross examination of Mr. Carter that he was never in Los Angeles during the time of the activities here. He never met Alda Faulkner; his communication was always by mail. He had assurance from Mr. Danziger that Faulkner would carry out their instructions. And through the years you can see the close touch that existed, because you find that thread of personal interest, of friendly greeting. She adopted the form of greeting or solutation that was common between Mr. Danziger, her brother, and Mr. Carter; she writes to him, “Dear OT,” and in a friendly vein with an expression of an understanding of his problems, the necessity of raising money; she writes to him in a confidential nature and speaks of the necessity of Mr. Danziger [1243] having money, the exigencies of the situation are disquiet in a friendly way to them. So, when we have in mind the fact that there was no personal contact which develops friendship in a much faster way, at least, than by mere corre-



spondence, we know that there was the most intimate contact between these three people in a working out of this scheme.

Now then, in conclusion I want to refer the court briefly to the government's position with regard to these registration counts. At one stage of the proceedings here the court asked me to——

Mr. Rose: If I may be permitted to interrupt. You will have an occasion to refer to this subject as we go along on these counts.

Mr. Lucas: Then I will defer any action on that, if the court is agreeable, until later on.

I think then with that, your Honor, I have encompassed everything that I feel is a highlight. I realize that I have not touched every exhibit, nor do I think the patience of the court, which has been manifested throughout the case, would bear with me to touch each and every individual exhibit. If there is any feature or phase of the case upon which I have not touched, and upon which the court wants to hear something, if you will indicate it, I will be happy to touch upon it. [1244]

Mr. Rose: May it please your Honor and opposing counsel, I do not believe, your Honor, that—forensics is the proper characterization—what has been presented to your Honor, in the main, in replication of my points, is a good substitute for legal analysis and an application of legal principles to consideration of evidence.

This appeal here struck me as being one that is unfortunately resorted to in appeals to juries with the idea of inflaming prejudice and passion and

distorting every bit of evidence, and I was surprised to observe in opposing counsel's presentation to your Honor an effort on his part to actually misread reputed statements which are here in the record in the form of questions and answers, and to distort to the very antithesis certain statements made in exhibits. For example, in this Exhibit 105, to which reference is had, opposing counsel persisted in telling your Honor that Mr. Danziger's written statement here from London, shortly prior to his return, reflected that he had met with dismal failure in England, and he was returning empty-handed and broke.

As a matter of fact, the communication that he was reading from and endeavoring to interpret has this language in it, and I don't know how he can possibly, on any sane basis, advance the contention that this letter states what he claims it does. Now let's listen to what it says. It says:

"I have a firm agreement with a nice [1245] house here to furnish TIP money for five wells and then later, after production, bring it out on the market. They are organizing a public company to take in some other lands and get their money, part of which will then go to TIP."

Now, how can that possibly be construed to mean that he is returning empty-handed and with a failure? To Mr. Mainland he said he had a firm agreement, and it has been developed here that in part it was the meddling and constant bickering of the S.E.C.—and I don't blame them, because when their attention was called to some of the activities

of Warren and his henchmen, I don't blame them for getting on the job, your Honor—but it was that meddling on their part, as you will remember Mr. Danziger told them that they had caused him no end of anguish and difficulty in killing any deals that he had with these British firms, and so forth, it was their meddling in so far as the TIP was concerned.

I take the position that counsel apparently doesn't give the slightest regard to the legal proposition that inferences are to be drawn in favor of the accused and not against him. He keeps on telling this court—and he hasn't varied in one single instance from that position—that this TIP setup, its rights, its properties, and its potentialities is sheer humbug, as he puts it; it is a fraud, [1246] mullet, mullet, mullet, mullet; and yet we find that the S.E.C. in its incipient stages, at which time they were more rigid than they have ever been—they have relaxed tremendously since the occasions when they were considering this thing here, referring to Exhibit A and the registration—authorized the sale of a million dollars of this worthless security that he is talking about to the public, and approved a prospectus that outlines the thing that he says is a fabrication, namely, that 1,500,000 pounds English sterling had already been invested formerly in the acquisition of these particular holdings; and he keeps arguing here that this thing is humbug. I don't understand that. He hasn't introduced any evidence to that effect. As I pointed out to your Honor, there is no evidence here that this isn't the best potential oil property in the universe. There

is evidence here in the form of certain London and other pronouncements in oil publications, as your Honor will remember, that of speak of millions of barrels monthly being exported from Trinidad. That isn't any infinitesimal business. He speaks of the Doheny connections of Mr. Danziger, and a letter which refers to the fact that they earned over one hundred fifty million, I don't remember, in the course of years. He says that is humbug. Has he produced any evidence to that effect?

Everybody in this country, apparently, except this gentleman here, knows that the Doheny oil enterprises, in [1247] which Mr. Danziger was associated for a great many years, actually earned millions and millions of dollars. Mr. Danziger is no tinhorn promoter, as the record they themselves have produced here shows. The facts are before the Registration Committee. They never disapproved of the personnel and the assertions as to who the people were that were connected with this enterprise. Mr. Danziger is accustomed to dealing in enterprises that run into astronomical figures of millions, and everybody in this community can take judicial notice of that. He doesn't seem to be able to differentiate between the honest intentions of a man who has spent 58 years, as the record here shows, in this community, and who has been a member of the bar for over 40 years, and is still a member of the bar in good standing, and who has been connected with very large enterprises, he doesn't seem to be able to distinguish the difference between the activity of a man of that mien and



caliber, and a Mr. Carter and Warren. He seems to want to put them both in the same bed.

I want to point out to your Honor, as you view this whole record here, has there been a single instance of conduct on the part of Mr. Danziger presented here which would show a guilty conscience or show that he was apprehensive?

The truth of the matter is that the S.E.C. had no more business, legally, to go out on an omnibus expedition [1248] of examining the personal record of Wake Development Company than they would have of examining the records in my office. Mr. Danziger, a lawyer of long experience, told them that the business of Wake was no business of theirs, but if they wanted his records and papers and files, here they are. He turned them over. Does it occur to opposing counsel that Mr. Mainland and his associates wouldn't have been able to even find out to whom a sale had been made by the Wake Company if Mr. Danziger had not turned those files over, and the correspondence?

Did Mr. Danziger take the trouble to erase from his personal files and Wake Development Company any of these so-called incriminating memoranda? Did he remove from them the pencilled notations?

Counsel doesn't seem to be the least concerned about the fact that Mr. Danziger's actions were those of an innocent man, a man whose conscience was clear.

He says he had the effrontery to not return the money to McCoy when McCoy demanded it. Is that the action of a guilty man? A guilty man

would have tried to resort to the business "Well, here, you have caught us in a bum deal here; here is your money back," or work out something. That is all McCoy says he wants in that letter. But what is Mr. Danziger's position? He says, "Just a minute, gentlemen, we are no crooks, we didn't gyp you. If you were swindled by somebody, why don't you take the trouble to [1249] communicate with us and find out the facts? We are not returning this money just because you are threatening us. If you want to take it up with the authorities, proceed."

That is the conduct of an honest man; that isn't the act of a guilty person or a conniver.

He keeps on saying mullet, mullet, mullet, mullet; that is all I have been hearing in this court room. I wish he would take the trouble to find the correct pronunciation of that term if he likes it.

The Court: What is the correct pronunciation?

Mr. Rose: It is mullet.

I take the position here—for example, in reading to your Honor from the Mainland inquiries of Mr. Danziger, he tried to make it look as if Mr. Danziger said the only person that he was having any communications with was Mr. Carmen. Let's see what the facts are. Here is his answer:

"All the business I had with Great Eastern and Carmen was done by correspondence from London up to the time I arrived back in New York, and there was nothing in the nature of the business that would have made it even good business for Carmen to have taken on some other list."

Here again he speaks of Winslow in this thing here:

“At the time of this testimony you were in Europe, you have testified in this investigation your sister handled the details of the sales and correspondence with various people including Carmen.”

He assumes because this raconteur, as I will call him, has come forward and says, “I am everything that has been mentioned here, I am Roberts, I am Baker, I am so-and-so, I am so-and-so, I am Edwards, I am everybody that has been mentioned here”—he assumes that Mr. Danziger was privy to that business. There isn’t any proof to it in the way you can really say anything, except Mr. Warren confesses to the resort of that name, and we have the testimony of the witnesses that were brought in here that indicates he was traveling under those names, but even in the communications that have been presented here, if your Honor will analyze those, it becomes obvious and apparent that as far as the Wake Development Company and Danziger are concerned they are not writing to this man at all; in numerous instances they are writing about him. And he doesn’t seem to be able to analyze the difference between the first, second, and third person in a communication, and the fact that it is obvious upon reading those communications that they are not writing to the man knowingly that he is the same, that he is all things to all men, and he is all the men that we have mentioned here.

For example, take that stock transfer, I think

it was in the name of Roberts, as I recall it, that thing is [1251] witnessed by another witness, and it was transmitted. Why go through all that formality if it is a mere hoax and everybody knows he is everything?

As I say, your Honor, here he says everybody was being cheated. Let's call attention to a few outstanding observations.

The testimony developed here is that this man Carmen or Carter in the presence of a man named Kramer told Danziger that they could sell the whole issue, every share of stock in TIP, if he would stay there, and what does he do? Doesn't he go to England nevertheless? Did he say, "Well, that's fine, boys; I will hang around here and see what happens."

And at the first false move that was made in this transaction, doesn't Mr. Danziger repudiate the authority and quash it instantly both by cable and by letter and cuts the whole deal off? Does it look as if he was out to take the responsibility of these promoters?

Why only a \$20,000 escrow, and why go over to England and make the arrangement that is indicated that he succeeded in making when he returned from there, namely, the arrangement was made to drill the wells there?

Counsel doesn't seem to understand there is a distinction between Wake Development Company desiring to get a small sum of money, because all they had to gain if the whole issue were sold that was discussed or put into [1252] the agreement was



\$20,000, that is all that could be made on their part; that would be their expenses in negotiating and carrying on the real legitimate business over in England and in France and in Italy where he went that has been indicated in this record.

Does that look as if Mr. Danziger went back to New York and welcomed to his bosom this group of swindlers, when they were telling him they could sell the whole business? While Mr. Carter was neutral, as he says, he writes a letter in which he says there was no occasion to misrepresent anything, he could have sold this Pierce woman \$100,000 worth of stock with no kick in the universe. That is his own confession in writing. And he admits that his thoughts were pure at the time.

These are the things that strike me, your Honor, as outstanding. For example, has counsel given the slightest consideration to that maze of documents that are in evidence here, your Honor, 'way up to 1939, where Mr. Danziger is communicating with the Registry Division in England, with the ministers and representatives of England, with the State Department of the United States? Does opposing counsel conceive that these communications resulting finally in a change of legislation there, an official government pronouncement that they would permit Trinidad to qualify there, does he think that these activities were all resorted to with the idea of making a \$300.00 sales to a post office [1253] clerk back in Ohio or something.

I wonder if that really is in his mind. To me there is nothing more inimical than the complexes

developed frequently by prosecutors. They can't conceive that any man may be doing an honest act. Why, it is inconceivable to them that a man could write a letter and mean what he says in the letter. They see hidden and lurking in there this propensity to mulct, and they can't see anything else.

Now, I don't know, your Honor, it seems to me it is inconceivable that a man who has been a resident of this community for 58 years, and who has been a member of the bar for 42 years, would stick his neck out to become party and privy to any crooked deal of the nature and character that counsel here seems to think he so willingly became a party to. To me it is inconceivable, because what was involved? As I pointed out to your Honor, if you take an analysis of the records here, you will see that Wake Development Company in the course of a period of five years from the time that Mr. Danziger was unfortunate enough to meet Mr. Carter and his clan, for five years what did Wake Development Company realize from this T.I.P. stock that they had? About \$10,000 gross, that is all. Counsel would even saddle us with the responsibility for the doings of some admitted crook that the record shows went to jail for selling the American Can stock of a woman. And he adds that on to his figures in trying to advise your Honor of the [1254] amount of money involved in connection with these transactions.

Now, there is an illustration of how fair and reasonable opposing counsel is.

As I say, your Honor, Mr. Lucas has introduced

evidence of a letter of recommendation from Doheny, and he has introduced the structure of the personnel of Trinidad. Has he endeavored, even—now, that is my point—has he even endeavored in the slightest manner or degree to present to your Honor any proof that the assertions and statements therein contained are in any respect an exaggeration or false or untrue? No. But he tries to argue that they are necessarily humbug and not to be believed. Why? Because the defendant is on trial, and because this magnificent specimen of mankind (indicating) has come into court, and you could see how he licked his chops while he was on the witness stand, how he relished putting it over on some spinster back in New York or somewhere; he thought it was delightful. When he flashed a newspaper or something at somebody and resorted to those chicaneries and tricks, he actually relished and reveled in what a beautiful piece of work he was doing.

Now, is it conceivable, as I say, that a man who is a member of the bar for 42 years, and who has lived in the community for 58 years, and who has been connected with large and tremendous enterprises in high office, would be [1255] disposed to approve of that type of conduct and participate in it? I can't see it, your Honor, unless the man is insane.

As I pointed out, your Honor, there is a distinction between legal proof and this rabbleroising resort to inferences by distorting facts and by disregarding clear and unequivocal statements and documents.

My position is when did this conspiracy originate? We have the language that was used. We have all of the conversations. They have jumbled together an act occurring in 1940 with no relationship and no privy to anything that occurred in '35, with acts in '38, '37, and they have attempted merely because they want to take that position to say that we were party to a conspiracy of this type. In other words, that we authorized Mr. Warren to do these things that some testimony here is that he did. I say, your Honor, there is no proof to that effect.

I don't have to argue to your Honor that the authorities—your Honor has reviewed them many more times than I have—the authorities are legend to the effect that a witness of Mr. Carter's admitted characteristics and with the benefits accruing to him here for his cooperation, that everything he says, unless it is sound and convincing, and has the ring of truth, must be looked on with the deepest suspicion, and must be rejected where any other inference can be drawn. [1256]

From the factors here before your Honor, I don't know how much credence you put in the testimony of Mr. Carter, I don't know; your Honor has had a great deal more experience than I have, and I don't know what your reaction is to him, but if your Honor is interested I will tell you what mine is. I am frankly convinced that man couldn't tell the truth if he wanted to. He apparently has the native intelligence that if he didn't go off, if he would have stuck to that Y.M.C.A. and church training of his, he probably would have been a very



successful and brilliant man. He has those potentialities and the physical characteristics that could have been utilized there. But for some reason or other he seems to delight, it is a sort of psychotic sadism, as I observed it, in which he takes delight, as we say in the vernacular, in putting it over on someone.

You will remember in his discussion with Mr. Danziger he admits that Mr. Danziger says there is no occasion in the world to misstate or exaggerate anything in this deal; this is a clean deal with tremendous potentialities.

Now, in passing, as my mind wanders over this maze of evidence and the arguments advanced by opposing counsel, he talks about a letter going out in 1940 in which Mr. Danziger still evinces a disposition to believe that the Trinidad International Petroleum has a great future. It doesn't occur to him that Mr. Danziger was still working at that time earnestly and legitimately trying to actually get [1257] money because he believes in the merits of that enterprise. And, as a matter of fact, your Honor, up to the time we started the trial here he was still working on it.

He says, for example, he interprets that letter that he read about why can't we get Canadian brokers, this is a colonial enterprise and they could put up the money for oil and so forth, he assumes that the idea there was to go out and swindle the Canadian brokers and the Canadian financiers; he doesn't assume that they may have intelligence enough to investigate this thing before they put

any money into it; he doesn't assume that the S.E.C. organization must have given considerable thought to the material set out in Exhibit A here before they authorized this group to go out and raise, I believe, a million dollars from the public with the blessings of the S.E.C. The S.E.C. passed, in 1934, the prospectus, making reference to the thing that your Honor called my attention to, that seven and a half million dollars prior investment in the enterprise, except as I pointed out to your Honor it is set out in that material as a million and a half pounds sterling, and your Honor will take judicial notice that there is a propensity for us in this country to speak of a pound as five dollars. We know, of course, there is a fluctuation there and the pound varies as distinguished from our five dollars, but I mean that is an expression that is resorted to sincerely not for the purpose of deceiving anyone, but when we speak [1258] of a pound we speak of five dollars. And when you speak of one million and a half pounds sterling, and you were to transpose that into American currency, you would refer to it as seven and a half million, five times that amount.

I do not wish to take time, your Honor, in bickering and rebickering and in arguing this matter. After all, your Honor in the last analysis is going to give expression to what you believe the evidence here reflects not from the mental approach of opposing counsel, I am sure, but I take the position in view of their delay in bringing us to trial for over a period of three years—that is, to even arraign

us for over a period of three years—in view of making it necessary, as I have addressed this court in the beginning, making it difficult for us to bring in witnesses or evidence in this case to show the bona fides of the activity of Danziger in England, as I say it is a very easy thing for Mr. Carter here or Warren—that is his name he says—it is a very easy thing for him to get up here, your Honor, after he has made a deal to become state's evidence and say, "I wrote a letter to Mr. Danziger in which I told him so and so." Does he produce even the carbon copy of such document? Is it possible for us to determine—if your Honor wants to believe him, of course, I recognize that judicially you have that power, you can believe every word he said regardless of how fantastic I think it is in many respects, and you can accept, I think, if you choose to, his statement [1259] that "I wrote a letter to Danziger in which I told him I am a big crook, I have just swindled so and so out of this, and I expect to go back and take the coal out of their cellar next week, and Danziger wrote back O.K." But where is the letter Danziger wrote? "I don't know. I destroyed it, it got lost." And yet he comes up here, amazingly, with even a draft memorandum concerning the very earliest stage of this deal, this Delaware deal with the Gas Company, an original draft, your Honor, of a pen and ink notation with expurgations there of a proposed communication that wasn't even sent out until more than a month after Danziger or two months after Danziger is in Europe.

Now, that is a very interesting insight to me, your Honor. Apparently he is a student of the philosophy of Lord Henry in Oscar Wilde's "Picture of Dorian Gray" in which he says, "Never write a letter and never destroy one." Apparently he adheres to that philosophy.

He refers to Kramer in that letter that he wrote during the month of October, 1935, as having a warped mind, and yet your Honor will observe how cagey this individual is. And, as I say, if we draw a legitimate inference from some of these communications, you will find it is apparent, you must conclude, your Honor, that it is apparent that this man here wouldn't deal straight with anyone. He was using aliases against himself. How he ever kept up with them I don't know.

Now, he did admit he had henchmen, he kept no record of [1260] these names that he used in these various transactions.

Now, what was his demeanor here on the witness stand, and then I am going to conclude. In the incipient stages of his testimony, your Honor, he kept referring that he communicated with Wake Development Company; then the next day he comes on after he has had a recess, and of course that wasn't possibly the result of any conference, he suddenly begins saying Danziger, Danziger, Danziger.

"Who did you get this from?"

"Danziger."

Not Wake Development Company, but Danziger.

"Who did you send this to?"



“Danziger.”

That was that change of pace. He evinced, to my mind, then that some statement in one of these exhibits had some substance to it. In other words, he seemed to be anxious to smear Mr. Danziger, very anxious to accomplish that end ruin the man's reputation.

I don't have to tell your Honor what a possible conviction in this case would mean to a man of his age with as long a residence here in this community, and his being in good standing as a member of the bar for over 40 years. I think your Honor should, as I believe you will, and in my opinion it would be a proper judicial act on your part, in view of all the facts and circumstances and the record here, [1261] to pass favorably upon this motion in behalf of the defendant Danziger at this time.

That is the only motion that is before you; I submit it.

The Court: It is 5 minutes to 11:00. I will reserve ruling on this motion which is directed to the first count, and then we will proceed to deal with the other counts at the end of the morning recess.

(Short recess.)

Mr. Rose: Your Honor, at this time——

The Court: Go ahead and give me all of your remaining motions, Mr. Rose.

Mr. Rose: Very well, your Honor.

At this time I am addressing to the court a motion to quash and annul—yes, I have it—Count 2

of the indictment herein—wait a minute. I will withdraw that, your Honor.

I submit to your Honor a motion to quash and annul Count 1.

The Court: You hadn't stated that?

Mr. Rose: No, I hadn't, your Honor. I thought I neglected to address that motion to the defendant Trinidad International Petroleum, Limited, a Nevada corporation, upon the grounds, in addition to the analysis of the evidentiary matters and contentions contained and set forth in the indictment as presented in the motion in behalf of the defendant J. M. Danziger, individually, and I incorporate those matters [1262] by reference, and add the ground that there is absolutely no evidence that this corporate entity at any time participated or was a party to the alleged conspiracy set forth in Count 1.

The Court: Decision will be reserved on that motion.

Mr. Rose: I now present to your Honor a motion to quash and annul Count 1 as against the corporate defendant Wake Development, a Delaware corporation, upon each and all of the grounds heretofore submitted in support of the motions on behalf of the defendant J. M. Danziger, individually, and the Trinidad International Petroleum, Limited, a Nevada corporation, and adopt all of the grounds presented in behalf and in support and as grounds for the granting of said motion.

The Court: Decision will be reserved.

Mr. Rose: At this time, your Honor, I move in behalf of the defendant, individually, J. M. Dan-

ziger, to quash and annul and set aside Count 2 of the indictment upon the following grounds: Count 2, in addition to merely realleging and incorporating by reference—they don't say it, but we will assume that is what it means—all of the allegations of Count 1 except the last two paragraphs, this count purports to make it an offense and alleges the violation of the laws of the United States, particularly Section 17 (a) (1) of the Securities Act of 1933, by the allegation the defendants, in the plural, on May 8, 1939 in the sale of [1263] Florence Lawyer placed in the mail in this jurisdiction a letter, that letter is set forth in the form of a facsimile, or, rather—it will show you what happens to your mind; I can't think of what they call this process for the moment.

Mr. Mainland: Photostat.

Mr. Rose: Photostat of a letter bearing Los Angeles postmark of May 8, and addressed to Mrs. Florence S. Lawyer. This letter, your Honor, on the letterhead of the Wake Development Company, and bearing the signature of "A. Faulkner" merely states: We acknowledge receipt of your letter of May 3rd with enclosure of certificates, specifying certain shares of the Golden Quebec Mines stock, and your check in the amount of \$390.00, and certificate for 1113/7ths shares of Trinidad International Petroleum, Limited, stock and units of preferential profit sharing notes will be forwarded to you by registered mail within a few days.

I submit, your Honor, that that reputed act apparently is designed to be an overt act in fulfillment

of a conspiracy. This multitude of allegations adopted by reference. But, I submit, your Honor, that the sending of this letter cannot possibly legally be construed as being an unlawful act or the use of the mails as defined by said Section 17 (a).

The Court: Mr. Lucas, will you give your characterization of 1 and 2? You don't need to get up.

Mr. Lucas: Yes, your Honor.

The very closing words of the letter itself show it is well within the statute—— [1264]

The Court: No. What are 1 and 2? What kind of counts are Counts 1 and 2 by the government?

Mr. Lucas: Those are Securities Act counts. And the very closing words of the letter——

The Court: They are not mail fraud counts?

Mr. Lucas: No; there is a companion mail fraud count. Count 15 is a companion to Count 1, but they are Securities Act counts, and the very closing part of the letter brings it within the statute.

The Court: That is what I wanted from you now. Continue.

Mr. Rose: Your Honor is undoubtedly familiar with 17(a) of the Securities Act of 1933 as amended, or shall I read it to your Honor?

The Court: Don't assume that I am familiar with too much, Mr. Rose.

Mr. Rose: The charge in this particular count, your Honor, is set up as an alleged violation of Section 17 (a) (1) of the Securities Act. Now, this Act is in the form of a mail fraud statute in that it says:

“It shall be unlawful for any person in the sale



of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—” [1265]

Subdivision (1), which is the one that we are relying upon:

“to employ any device, scheme, or artifice to defraud, \* \* \*

I submit that by no stretch of the imagination can this letter, and I have read it, be deemed or regarded as the use of the mails as defined by Section 17 (a) subdivision (1).

The Court: Where do you think that would be in U.S.C.A., what volume? [1266]

Mr. Rose: U.S.C., Section 77q, Subdivision (a).

The Court: Is that in the main part or in the back of the book, do you know, Mr. Lucas?

Mr. Lucas: It is in the main part.

The Court: 77q—

Mr. Rose: It is 77q, Subdivision (a).

The Court: What page?

Mr. Lucas: 456.

The Court: 77q, which is entitled “Fraudulent Interstate Transactions?”

Mr. Rose: That is correct.

The Court: (a) reading:

“It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—”

Now, you proceed, Mr. Rose.

Mr. Rose: "to employ any device, scheme or artifice to defraud."

I don't think it would be very helpful to your Honor, but I may make the observation so you would have my theory about it, I would construe that statute to be a statute on a specific offense where interstate transportation is used in perpetrating a fraud.

Now, this particular act here, your Honor, is the [1267] sending of this particular letter. Now, the letter is an acknowledgment of a receipt of some money, and it merely declares that they are going to send some stock by other mail, and it is an act of the Wake Development Company.

There isn't anything that I can find in this count or in this act that would constitute a public offense. Certainly it is no public offense on the part of the defendant J. M. Danziger, in whose behalf I am relegating this motion, it isn't even his act, and isn't the character or type of an act denounced by the Code or by the Securities Act.

In other words, I say I have received your check, and so forth, and I am going to send you some mail. They are not going to try to sell her anything here. Whatever transaction has already taken place has already taken place not through the use of the mails or the use of any form of interstate transportation. There isn't any evidence here on the part of Lawyer, anyhow. The only thing we have is the statements that Warren testified to in his transactions with her. But that isn't what is charged here. They are attempting to set up a substantive offense as a distinct

crime by the sending of this particular communication.

In other words, I have in mind, your Honor, so your Honor will not think I am confused on the legal ramifications of this, that overt acts where a conspiracy has been established committing a particular crime, I recognize that [1268] each overt act is a separate offense; I am not in the least bit confused about that. But I submit that there is no evidence whatever to hold or charge, even, the mailing or the participation in any manner or respect, of this particular communication, on the part of Danziger, and I submit it on those grounds.

They are trying to make a substantive offense an overt act. At least they don't charge it. If we construe the language——

The Court: How many counts like this are there, Mr. Lucas?

Mr. Rose: Quite a few.

Mr. Lucas: Counts 1 to 8, inclusive—pardon me, counts 1 to 7, inclusive.

The Court: How come you are not making the same point as to count 1, Mr. Rose?

Mr. Rose: In what respect? Count 1, your Honor, sets up—you mean by that letter that they attach?

The Court: I am just asking you that question. How come you are not making the same argument as to count 1 that you are now making as to count 2?

Mr. Rose: Count 1, your Honor, is this omnibus allegation——

The Court: That is incorporated by reference in count 2.

Mr. Rose: I don't think it is incorporated by reference, except I say it might be construed——

The Court: You claim it is? [1269]

Mr. Lucas: Yes, undoubtedly.

Mr. Rose: They do say: "we allege and incorporate, as if here set forth at length, the first count of this indictment except the last two paragraphs thereof:"

I don't know, in the light of the construction of the language in an indictment, I think they might very properly construe that as sufficient assertion of making a part of this count 2 all of the matters of count 1.

The Court: Except the last two paragraphs?

Mr. Rose: Yes.

The Court: Which pertain to the particular person named there, Mrs. Parsons.

Mr. Rose: Yes.

The Court: My question is how come you didn't make the same argument as to count 1 that you are now making as to count 2? I am asking you not to create any difficulty, but I am asking for information.

Mr. Rose: I don't think I have fully argued count 1. I thought I would generalize and set forth my grounds of my motion to your Honor, and your Honor would, necessarily, conclude that I am advancing the same argument. In other words, if I haven't I want to make it clear to your Honor that my position is——



The Court: You are saying to me now that the letter describing count 2 is not in and of itself deceitful, let me [1270] use that word, you are saying it is just a letter of transmittal of some stock?

Mr. Rose: It is not an act that might be relegated as an overt act in carrying out a conspiracy, because there is no contention that there ever was a discussion or a conspiracy, in fact, as alleged in count 1 or at all, whereby it was part of the so-called or alleged scheme to transmit a letter of this character; that such an arrangement and agreement would per se not be of a criminal act or character.

The Court: I better hear you, Mr. Lucas.

Mr. Rose: What I want to point out to your Honor is this: They have attached the letter to the tail end of count 1, and I am glad your Honor called my attention to that. As I said, this is a rather amazing potpourri, this first count, but I find that they wind up, in fact—frankly, your Honor, I didn't observe that, because this letter here that I have to reattach, it became loose here—frankly, that is why I took a little time in the beginning here making that motion, I thought this letter here was count 2, but I find now, your Honor, that the conspiracy that is alleged in count 1 purports to be and is alleged to be a violation of section 17(a) subdivision (1) of the Securities Act. Now, frankly, your Honor, this is the first time I had any idea that that is the theory of this conspiracy.

The Court: That the first seven counts are—what do you call that act? [1271]

Mr. Lucas: Securities Act of 1933.

The Court: Is that the short title of it?

Mr. Lucas: Yes.

The Court: The first seven counts are Securities Act counts, we will call them that.

Mr. Lucas: Yes. And that is the violation of the basic provisions of that act in using a scheme to defraud.

The Court: So much for your first seven counts. Then how many counts and what numbers are they that are mail fraud counts?

Mr. Lucas: 12, 13, 14, 15, 16. 8, 9, 10 and 11 are registration counts, as we refer to them. 17 is the conspiracy.

The Court: Do you have companion mail fraud counts to each of the 7 Securities Act counts?

Mr. Lucas: I don't say in each one. For instance, the companion count to count 1 in the mail fraud is count 15; companion count to count 2 is 9 and 14, there are two companion counts there; count 3 carries the companion count of count 10; count 4 has no companion count; count 5 has the companion count of count 11; count 6 has the companion count of count 16.

The Court: All right.

Mr. Rose: I desire to add, with the court's permission, to the grounds submitted in support of the joint several [1272] motions, singularly, in behalf of the three defendants, two corporate and Mr. Danziger, the grounds for the motion for the quashing and dismissing of count 1, that the evidence is wholly lacking and wanting in establishing that the use of any interstate transportation or mails or any-

thing transmitted therein was in legal contemplation or pursuant to Section 17(a) subdivision (1) of the Securities Act of 1933 or 15 U.S.C. 77q subdivision (a)(1) a violation thereof, in that it affirmatively appears, one, that the securities involved in any of the transactions herein referred to or alluded in the testimony. The record evidence shows that it was, one, the personally owned stock of the Wake Development Company, and that the communications utilized both—that is, the interstate communications utilized or resorted to were per se not fraudulent or in any manner or respect a device, scheme or artifice to defraud, either under the Securities Act of 1933 or the amendments there at that time existing or of the code specified in said indictment. I desire to add that as grounds.

The Court: It may be added. Pardon me, now, Mr. Rose. Mr. Lucas, do I understand the government to take the view that the Securities Act, with which, incidentally, I have never dealt before in a criminal prosecution, is roughly, I may say, the same as the mail fraud statute in this respect: that any one, any group of defendants—it would [1273] be a group, because we have several here—any group of defendants who enter into a scheme to defraud by the sale of securities, and thereafter employ the mails in carrying it out, that that is a violation of the Securities Act?

Mr. Lucas: Yes, your Honor stated it very clearly.

The Court: It is very close with the mail fraud?

Mr. Lucas: It is construed by the courts exactly

parallel, you might say, in every particular with the mail fraud statute.

The Court: Let me state it another way, then. If the subject matter of a prosecution is securities, the evidence which would support a mail fraud prosecution will support a prosecution under the Securities Act?

Mr. Lucas: Right; other elements of the offense being present, it is exactly the same.

The Court: You don't need to drag that in. The mail fraud statute covers other things than securities.

Mr. Lucas: Yes.

The Court: All right, then. My question, again, is if the subject matter of a prosecution happens to be securities, then the evidence which would support a prosecution under the mail fraud statute will support a prosecution under the Securities Act?

Mr. Lucas: If I understand your question, yes. The answer is yes.

The Court: Under the mail fraud statute if two or more [1274] enter into a scheme to defraud, and use the mails to execute it, that is a mail fraud prosecution?

Mr. Lucas: Yes.

The Court: Your claim is if two or more enter into a scheme to defraud by the sales of securities, and use the mails to execute it, that is a violation of the Securities Act?

Mr. Lucas: Yes, that is as I understand the law, and that is what I am going to maintain before you in my turn for argument.



Mr. Rose: He maintains it, all right, but I am quite sure that he hasn't furnished your Honor with any authority, nor can he, that that is the fact.

This act here, the Securities Act, and the U. S. Statute, expressly under subdivision (c) withdraws the exemptions provided in Section 3, claiming that that doesn't apply. This section pertains and relates to the use of mails or interstate transportation in the proceedings and process of defrauding a person in the sale of securities, irrespective of whether it is subject to registration or anything else, and it is not analogous to or intended to be a separation of the use of the mails or interstate transportation facilities in distinguishing between the sale of a security or bond from any other matter at all.

This is using the mails in a scheme to defraud through the use of those particular forms of communication, and [1275] it is a distinct and specific offense, and the statute relegates itself to the use of the mails as it is there defined: "to employ any device, scheme or artifice to defraud."

It says, " \* \* \* in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly."

In other words, it is the use of these facilities in perpetrating a fraud. They have made a lot of allegations here, but as I point out, I don't know how they claim that the mails were so used—unless your Honor should hold and conclude that the so-called rights phase of this transaction, where a person was given the right that they were at liberty

to exercise, was a fraudulent device—and I don't think there is anything here in this record, from the standpoint of rules of evidence, or from a consideration of the thing itself, that could be called a fraudulent device, that is, something to defraud any one.

The Court: I am not sure that you stated your motion as to count 2.

Mr. Rose: I was in the process of stating it, your Honor, when your Honor called my attention to one phase of count 1, for which I am very grateful, which I inadvertently overlooked. [1276]

The Court: We better go back to count 2, then. You better begin again with your statement of the motion. That is the Lawyer count.

Mr. Rose: In behalf of the defendant J. M. Danziger as an individual defendant, I move that count 2 of the indictment be annulled, quashed and dismissed upon the following grounds: One, that the evidence is wanting and lacking in supporting each of the allegations which are purported to be adopted by reference as a part of count 2, and that the act as set forth, namely, the transmittal of the particular letter of which a photostat is attached and made a part of the allegations of count 2, is not such an act as is contemplated by Section 17(a), Subdivision (1) of the Securities Act of 1933, and its analogous statute, namely, 15 U.S.C.A. 77q (a), subdivision (1). And in addition to all of the grounds previously submitted with relation to that portion as to the charge in count 1 which have been presented in support of dismissal of count 1, I here-

with reallege and I particularly point out that there is no evidence whatsoever that defendant J. M. Danziger in any manner participated in, was privy to, acquiesced, or was a party to the placing of the particular letter therein set out in the mails, or at all; that said letter on its face shows that it is not the act of the defendant Danziger, that it is not the fact. It affirmatively appears, and testimony shows, one, that this letter was prepared and [1277] written by the secretary of Wake Development Company, and if by any one that she placed it in the mail. There is no evidence that she even placed it in the mail. And it, manifestly, cannot, under any sound hypothesis, be based as an overt act of this reputed conspiracy that counsel has represented to your Honor as taking place in 1935. And upon all of the grounds I submit that motion as to count 2 on behalf of the defendant J. M. Danziger.

The Court: That decision will be reserved.

Mr. Rose: Now, your Honor, in behalf of the defendant Trinidad International Petroleum, Ltd., a Nevada corporation, a defendant herein, I submit the motion to quash, annul, and set aside count 2 upon all of the grounds heretofore submitted in respect to count 1, which are incorporated by reference and made a part of this motion, and upon the special additional ground that there isn't a scintilla of evidence that defendant Trinidad International Petroleum Company in any measure or respect had anything whatsoever to do with that letter, or that that letter pertains or relates to any purported act on the part of said corporate defendant.

The Court: Decision is reserved.

Mr. Rose: I submit to your Honor a motion to dismiss, quash, and annul count 2 upon each and all of the grounds heretofore submitted in respect to count 1 and in support of the quashing of count 2 previously addressed to this court [1278] in the motion in behalf of the defendant J. M. Danziger and Trinidad International Petroleum as it may pertain or relate to the defendant Wake Development Company.

The Court: Decision is reserved. Now, proceed to count 3, Mr. Rose.

Mr. Rose: At this time, your Honor, on behalf of the defendant J. M. Danziger I move to quash, dismiss, and annul count 3 upon the following grounds: In so far as the reiteration by reference of all of the parts of count 1, which is set forth in the second paragraph of count 3, which embraces a reallegation of all of the matters and things set forth in count 1 save and except the last two paragraphs, I adopt by reference each and all of the grounds heretofore submitted in support of the motion as to that part of the indictment, and I further interpose and add to that in support of the motion to dismiss count 3 as to the defendant Danziger that the act, to-wit, namely, that on January 19, 1939, and it does say in the sale to Harry F. Pitts, that the placing of the letter set forth in facsimile through a photostat, that the matters and things contained in said communication are not such an act as is proscribed by Section 17 (a), Subdivision (1) of the Securities Act or of 15 U. S. C.



Section 77q, Subdivisions (a) and (1). And here, again, is a communication which on its face shows it was a letter of the Wake Development Company bearing the signature of "A. Faulkner" as secretary, and that said act [1279] and said communication in contemplation of law does not constitute the commission of the offense purported to be charged by the Section 17 (a) or the United States statute referred to, and that there is no evidence to connect the defendant Danziger personally with the transmittal of this particular letter, nor can it be deemed to be a part of the reputed conspiracy represented to this court as having been formulated in 1935.

The Court: Decision is reserved.

Now, Mr. Rose and Mr. Lucas, I have been asked to go with the district judges to one of the bar meetings this noon, and I have just been sent word that we need to leave early, that they are waiting for me, so we will resume at 2:00 o'clock.

Mr. Rose: Thank you, your Honor.

(Whereupon, at 11:45 o'clock a. m., an adjournment was taken until 2:15 o'clock p. m. of the same day, Wednesday, January 31, 1945.) [1280]

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Los Angeles, California,

Wednesday, January 31, 1945, 2:15 p. m.

The Court: You had just moved under count 3, Mr. Rose, to quash in behalf of defendant Danziger.

Mr. Rose: If your Honor will permit us, apro-

pos of the subject that was discussed in general between your Honor and opposing counsel just before the recess, it brings a certain thing to my mind that I would like to state to the court, if you will permit it.

Frankly, your Honor, I have been puzzled here at various stages of this trial to comprehend even with some degree of certainty the theory of the government's case. We know as a legal concept in principle the matter of *expressio unius est exclusio alterius*.

In this case the form of conspiracy charged is specifically identified as a purported violation of Section 17(a), Subdivision (1) of the Securities Act of 1933 and of the U. S. Code Title 15, Section 77q, Subdivision (a). Now, from counsel's observation made to your Honor, I am under the impression that he thinks he is in a state court trying one of these omnibus so-called conspiracy cases in which the acts, omissions, commissions and deceit, and so forth, constitutes an offense; now, for example, taking the admission of Mr. Warren here, in all of the transactions concerning which he testified he committed the offense commonly known as grand theft by trick and device, or he [1281] committed the offense of obtaining money under false pretenses, all offenses concerning which, and each of them, he would be subject on his own confession and admission to indictment, trial and conviction in the particular communities in which he committed these offenses.

On the other hand, the question that occurs to

me, your Honor, is this: that is no concern of the United States. As I pointed out, we are not dealing with the so-called offense concerning which your Honor made inquiry, namely, the use of the mails to defraud. This offense here, your Honor, as outlined in the Securities Act and in identical nomenclature in the U. S. Code, is a substantive specific offense; it has its identity and it has its parts.

Now, what I have in mind is what it says here. I hope your Honor doesn't think I just want to take up time, I am not going to go back to this, but I would like to make my position clear so when opposing counsel replies he will have an opportunity to address the court on the point of law that I am trying to background and relegate these particular motions.

A substantive offense: "It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—" and subdivision (1) is the particular section of this offense: "to employ any device, scheme, [1282] or artifice to defraud." Now, that is the offense charged so far as we have covered these particular counts.

Now, your Honor, we know it is elementary that a conspiracy to commit a particular offense is of itself an offense. Conspiracy to expropriate on the sidewalk would be an offense, that is the conspiracy. Now, my point is this: This section, necessarily, contemplates a scheme and device to use interstate commerce facilities communications and transpor-

tation, that is, the use of mails, in a scheme to defraud in the sale of securities.

Your Honor, the tail end of this section, subdivision (c) specifically outlines that the exemptions provided in section 3 shall not apply to the provisions of this section, meaning that it doesn't make any difference whether the security is subject to registration under the Securities Act or at all. In other words, this is a separate and distinct offense.

The Court: You might call it a federal blue sky act?

Mr. Rose: That is correct, your Honor, that is exactly what it is. It is a substantive offense, the conspiracy of which would constitute one offense, and the particular transactions in each and every instance would constitute an offense, and the overt acts of each as part of that conspiracy would constitute a specific offense.

Now, without taking too much time, here is a very brief part of a case that I am going to submit to your Honor for [1283] consideration. I am submitting the case of *United States v. Monjar*, reported in 47 Fed. Sup. at page 421. This deals with 77q, the specific form of offense that we are talking about. It says:

"The first count, however, does not allege that the mailing of the letter referred to therein was 'for the purpose of executing said scheme and artifice to defraud and for the purpose of obtaining money and property by means of false and fraudulent pretenses, representations and promises and



attempting so to do \* \* \*.' It is therefore not sufficient, and I sustain a demurrer as to it. In fact, the government concedes that the defect in Count 1 exists. However, the government may still utilize count 1 as a 'reference' count, so that the remaining counts of the indictment can incorporate the scheme set out in count 1."

Citing two Circuit Court cases.

Now, my position, your Honor, is this: We must be cautious in considering from a legal standpoint and not from an appeal to passion and prejudice the state of the evidence in so far as it may be deemed to apply to the alleged offenses committed here and set forth in the indictment, and in doing so we must separate and eliminate from consideration in this case the particular grand thefts and larcenies committed by Carter in these several states, because obviously this substantive offense pertains to the [1284] use of those facilities in interstate commerce, a scheme to defraud by means of those facilities.

Now, then, what have we in connection with this scheme here? If your Honor should hold that, for example, the so-called letter that went out under the Trinidad letterhead, after Mr. Danziger had departed for Europe, whether the arrangement to send out that letter comes within the purview of subdivision 1 of this section, namely, to employ a device, scheme or artifice to defraud; now, that is what is alleged to have been the scheme here, that they used that. Now, what is the record evidence in connection with that, your Honor? That device,

if it may be called such, was a result of what? An agreement between the Great Eastern Gas Company, a Delaware corporation, with its President DeHart and others, in which this trust company in Delaware was a party, and it is not a scheme between Carter and all of the so-called aliases and these defendants. And if they held and claimed that that was a scheme in violation of this substantive act, they do not allege it and they haven't brought in the proper parties. In other words, they have attempted to charge us with a scheme in the utilization of mail concocted in 1935 to use the mails and telephones, and haven't offered one word of testimony in support of that contention. They don't even allege it. And they don't say that the mails were used, as I pointed out in this case to your Honor. They are trying, as I say, [1285] a conspiracy allegedly in which they are trying to tie in everybody, which would constitute a conspiracy to commit theft or larceny by trick and device.

Now, as far as the use of the mail, that part of the so-called scheme which comes within the purview of the act, your Honor would necessarily have to find that the employment of that right privilege pursuant to a contract in writing between the Great Eastern Gas Company and the Trinidad Company was a conspiracy between those two corporate entities. Danziger would be deemed under the rules of evidence, if that act be deemed as a violation of this section, to be acting in behalf of the corporate defendant Trinidad Company. Now, if the

conspiracy, so-called, alleged to have been entered into in violating the substantive offense, the letter of the Wake Development Company asking them if they had exercised that right, would be deemed an act to defraud, that is a different story.

Now, that is the thing that I have in mind. I have been puzzled to know the theory of the government's case here. He made a speech here about the fact that what is his name? flashed a newspaper, and he pointed to Trinidad and stuck it in his pocket. All of that would be fine if we were trying a case here against Carter for grand theft by trick and device.

The Court: What I would like for you to do would be to complete your motions as to the first seven counts, which [1286] counsel says are laid under the Securities Act, and then we will ask him to state his theory as to them on the record; but I would like to get these motions down.

Mr. Rose: Very well. Do your minutes reflect that I completed a motion as to count 3 on the defendant Danziger?

The Court: As to the defendant Danziger, yes.

Mr. Rose: I now, your Honor, address to the court a motion as to count 3 of the indictment in behalf of the defendant Trinidad International Petroleum, Ltd. on the ground that the transmittal of said letter, a facsimile of which is set forth and made a part of said count 3, is on its face not an act of the Trinidad Corporation, and that the transmittal of said letter does not constitute the commission of any offense as contemplated by Section

17 (a), Subdivision (1) of the Securities Act, or Title 15 U.S.C. Section 77q (a) as charged in said count.

The Court: Decision is reserved.

Mr. Rose: And may I adopt by reference each and all of the matters advanced in connection with a motion to quash said count 3 by incorporating the matters and things heretofore submitted in behalf of the other defendants on the ground that said purported act on the part, reputedly, of the Wake Development Company does not constitute a public offense or a violation of said substantive act 17 (a), [1287] subdivision (1) and 77q of Title 15 U.S.C., Subdivision (1), and I move that that motion be acted upon on said count as pertains to said defendant.

The Court: Decision is reserved. Now, count 4.

Mr. Rose: Your Honor, as to count 4 of this indictment I submit to your Honor a motion in behalf of the defendant J. M. Danziger, individually, that said count be quashed, annulled and dismissed upon the following grounds: As to the attempt to reallege and incorporate the first count, I submit to your Honor without repetition the reasons and the matters presented in support of that particular count and that portion of the count in the preceding counts as if said grounds were restated at this time. And in addition thereto, upon the ground that the reputed offense set forth in said count is relegated to, other than the reference reallegations, to a reputed act of the transmittal on or about the fifth day of January, 1939



in the sale to F. A. Russell of a letter bearing said date. In this regard I submit that said letter on its face does not purport to be an act committed by or at the solicitation of the defendant Danziger; that said act does not contemplate or on its face purport to be a violation of Section 17 (a), Subdivision (1) of the Securities Act as charged, nor the identical act set forth in Title 15 U.S.C. 77q, Subdivision (a), upon the ground that said count fails to charge that the transmittal of this letter was, and the purported mailing [1288] thereof was for the purpose of executing a scheme of the character contemplated by said acts and for the purpose of executing said scheme and artifice to defraud, and for the purpose of defrauding the property by means of false and fraudulent pretenses and representations.

In this connection I call your Honor's attention this is the first of a series of letters referring to a mining stock transaction, and the testimony in this case on the part of Warren states that he never discussed with Mr. Danziger or any of the other defendants the subject of Canadian mining stock.

Now, that is the state of the record. If counsel can point anything out to the contrary I would like to know where it is. On each and all of the several grounds I submit the motion.

The Court: Decision is reserved.

Mr. Rose: I now move in respect to said count 4 that the same be quashed, dismissed and annulled as to the defendant Trinidad International Petrol-

eum on the ground that there are no allegations that the said transmittal of said letter was at their instigation or on the ground that they participated in it in any respect, and incorporate all of the other grounds heretofore addressed in support of said motion.

The Court: Decision is reserved.

Mr. Rose: I submit the same motion upon all of the [1289] grounds stated as to the defendant Wake Development Company.

The Court: Decision is reserved. Now, count 5.

Mr. Rose: As to count 5, I submit to your Honor a motion on behalf of the defendant J. M. Danziger as an individual that said count be dismissed, quashed and annulled upon the grounds, one, that—in that connection, I incorporate by reference each and all of the matters addressed to that portion of count 5 that I have heretofore submitted, which portion purports to adopt by reference count 1, and in addition thereto, and especially, I submit that the purported allegations therein which seek to do charge that on September 13, 1939 there was placed in the mails to Adeline B. Skinner in the sale of securities a check for \$300 drawn on the Farmingdale New Jersey Bank in violation purportedly of Section 17 (a), Subdivision (1) of the Securities Act of 1933 and 15 U.S.C. Section 77q (a), Subdivision (1), and that there isn't a word of evidence that said check was deposited in the mail by the defendant J. M. Danziger.

In that connection I submit to your Honor that

the depositing in a bank of a check could not be deemed and contemplated as the commission of any offense. It wouldn't matter to the government whether this check was sent to Farmingdale, New Jersey, by pony express or by a man on a bicycle, and so far as we know by any competent evidence there isn't anything here to show who put this in the mail, except we may infer from the testimony of this bank clerk [1290] who says that his records reflect this check was placed in that Bank of America here for collection. There isn't any testimony to show how this check got back to Farmingdale, New Jersey. Nobody has testified that it was sent back there by mail or by means of any interstate transportation over which the government has any control.

Frankly, I am very much puzzled about how the encashment of a check can constitute an offense in violation of the laws of the United States. I merely make that by way of observation in addition to my other grounds and reasons for the motion.

I submit that motion to your Honor in behalf of the defendant J. M. Danziger.

The Court: Decision is reserved.

Mr. Rose: I now submit to your Honor a motion on behalf of defendant Trinidad International Petroleum on all of the grounds heretofore set forth and presented both by reference and with particularly to said count in behalf of the Trinidad International Petroleum Company, and on the further ground there is nothing whatsoever to indi-

cate that they were in any manner privy or participated in the encashment of this check in any manner or means.

The Court: Decision is reserved.

Mr. Rose: I incorporate by reference and submit all of the matters and the grounds submitted in support of the motion to dismiss this particular count and such matters as [1291] have been presented collateral thereto by reference to former grounds specified and applied to the former counts and count 1 in behalf of the defendant Wake Development Company, and on the further ground that the encashment of said check cannot and does not constitute a violation of any of the sections or statutes recited in said count as an alleged violation.

The Court: Decision is reserved.

Mr. Rose: As to count 6, your Honor, I now submit to your Honor a motion in behalf of the defendant J. M. Danziger to quash, annul and dismiss count No. 6 of this indictment upon each and all of the grounds heretofore submitted in respect to that part of count 1 adopted by reference as heretofore submitted in connection with count 1 and amplifications of grounds for dismissal of said count 1 with the same force as if said grounds were now reiterated to the court. And in addition thereto that the said count fails to charge a public offense in that it purports to allege that on January 28, 1939 in the sale of E. Barrie Smith of securities the defendants jointly placed in the mail a check for \$195 on a Hartford, Connecticut bank,



that is, the Hartford National Bank and Trust Company, and facsimile or photostatic copy of said check is made a part of the said allegations. And I submit that there is no evidence in the case that the defendant Danziger authorized or participated and placed said check in the [1292] mails.

And, for that matter, I submit, again, that there is no evidence that any of these defendants placed said check in the mail. If it was placed in the mails at all, if we may assume that by surmise, conjecture and speculation, it was an act on the part of the Bank of America here in Los Angeles; and for all we know they may have used roller skates, as far as the record evidence goes, in transmitting that check to the Hartford National Bank and Trust Company.

The Court: Decision is reserved.

Mr. Rose: I now submit to your Honor a motion in respect to said count in behalf of defendant Trinidad International Petroleum Company, and with the court's permission I incorporate by reference all of the matters and the grounds heretofore submitted in respect to count 1 and the similar allegation in regard to the transmittal of check No. 5—that is count No. 5, with the same force and effect as if each of these matters were reiterated to the court in support of said motion.

The Court: Decision is reserved.

Mr. Rose: Just for the purpose of the record, your Honor, I am assuming from your Honor's judicial acts in regard to the several motions, that

your Honor is accepting and permitting me to refer by reference?

The Court: That is correct.

Mr. Rose: That is understood? [1293]

The Court: It is understood.

Mr. Rose: Because we have one judge on the Circuit Court, in one case that indicated that all the grounds must be reiterated, and I don't want to bore the court by going through that again.

The motion now has been made in behalf of Trinidad; is that correct, your Honor?

The Court: That's right.

Mr. Rose: I now present the same motion, namely, to quash, annul and dismiss as to the defendant Wake Development Company, and incorporate by reference the reasons and grounds as stated in support of said motion as heretofore submitted in behalf of the other defendants.

The Court: Decision is reserved.

Mr. Rose: Now, as to count 7—

Mr. Lucas: At this point, if your Honor please, the government will stipulate that count 7 be dismissed as to all defendants.

The Court: Why?

Mr. Lucas: On the ground we have not offered sufficient proof to support that. And that is the only one.

The Court: I am going to let Mr. Rose complete his record, nevertheless. What you might say about count 7 might have some application to the whole situation, counts 1 to 7.

Mr. Rose: I now submit to your Honor in be-

half of the [1294] defendant J. M. Danziger, individually, a motion to dismiss count 7, to quash and annul it, upon each and all of the grounds pertaining to that charge of the indictment adopted by reference and made a part of these allegations; upon the additional ground that there is no evidence to show that the defendant Danziger participated in, authorized or had any part in the transaction therein charged. On the further ground that the deposit of this check with the Bank of America as reflected by the evidence does not constitute a violation of the offense sought to be charged and specifically averred in this indictment. We have here, again, the situation that it is the contention of the defendants jointly, severally, and separately that if this check was deposited in the mail as alleged in said count it was the act of the Bank of America and not at the solicitation or request of any of the defendants, and so far as the evidence goes it may have been delivered by hand or foot or bicycle, I don't know what. In any event, not through any of the mediums, and it is not a device such as is set forth in the substantive offenses sought to be set up in this indictment.

The Court: Decision is reserved.

Mr. Rose: I submit the same motion, namely, to quash, annul and dismiss as to the defendant Trinidad International Petroleum, and incorporate by reference the grounds and each of them heretofore addressed in respect to the other counts so far as they may pertain to any of the allegations, [1295] the scheme, so-called device as alleged in said in-

dietment antecedent to and as a part of count 7.

The Court: Decision is reserved.

Mr. Rose: I now make a motion—who have we got now, Trinidad?

The Court: You are up to Wake now.

Mr. Rose: I haven't made it in behalf of Wake, have I?

The Court: You covered Trinidad.

Mr. Rose: I submit a motion to quash, annul and dismiss count 7 by reason of and adopt by reference all of the grounds and reasons addressed to the court in the prior motions in so far as they pertain and relate to the acts of omission and commission purported to be set forth in the preceding counts and each of them and made a part of count No. 7.

The Court: Decision is reserved.

Mr. Lucas, you give us the government's legal theory as to counts 1 to 7, which are the Securities Act counts.

Mr. Lucas: May it please the court and counsel, with respect to count 1 it is alleged that the mailing, use of the mails in violation of the statute and in execution of the scheme and in procuring the sale to Mrs. Parsons, that the mail was used in the letter as set up, the letter of May 15, 1940, which says, "Enclosed herewith you will find certificates of Trinidad International Petroleum, Ltd. in your name," and sets them out. Attached to that letter [1296] is the air mail envelope, return receipt requested stamped on the outside, together with a number. On the letter itself it bears the legend



that it was air mail registered and a return receipt was requested.

The Court: Where did that come from in the case?

Mr. Lucas: That came into the record and is in evidence and was identified, if I remember, by the witness Mainland, who said he procured it from Mrs. Parsons, the person to whom it was addressed, in the course of his investigation, as a representative of the Securities and Exchange Commission.

It is further referred to in some of the testimony of Mr. Danziger in his sworn testimony.

Now, as to that, your Honor, I hope counsel hasn't confused the court by his statement of the government's position. And may I, with the indulgence of the court, just briefly outline the legal aspect of this?

The law says that whosoever shall devise a scheme to defraud and make use of the mails or of the instrumentalities of Congress in effecting a sale of a security shall be guilty.

Now, all we have to do is to prove the scheme to defraud.

The Court: What statute are you talking about?

Mr. Lucas: I am talking now about the Securities Act itself. [1297]

The Court: It isn't phrased that way.

Mr. Lucas: Sir?

The Court: It isn't phrased that way.

Mr. Lucas: I didn't purport to quote it verbatim, your Honor.

The Court: No.

Mr. Lucas: Let me get it in front of me and speak authoritatively, at least, by reading the law.

The Court: That would have been a good statement of the mail fraud statute, the one you just made.

Mr. Lucas: Let's take 77q itself, your Honor.

The Court: I don't say that we don't arrive at the same result. I am still looking for light. The fact is that the draftsmanship of the mail fraud statute and the draftsmanship of the Securities Act are different in form.

Mr. Lucas: They are substantially the same, only as the word "sale" is used.

When I answered your Honor this morning, I think I was——

The Court: Let's read now the Securities Act. It isn't long.

Mr. Lucas: "It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails"——

The Court: All right. All we need for the purpose of [1298] this case is it shall be unlawful for any person in the sale of any securities by the use of the mails—to do what?

Mr. Lucas: "to employ any device, scheme or artifice to defraud."

Now, I am going to redwell on the artifice, scheme and device to defraud. I think it has been so thoroughly covered here.

The Court: That is your opening allegation,

that is what you have been talking about for two or three days?

Mr. Lucas: Yes. Now, having proven the scheme to defraud, what else must the government prove? We must prove the use of the mail.

We have in evidence the very mailed document, the piece of mail; we have it here; it is in evidence; it cannot be questioned.

Now, then, to connect it with the sale, I take it that it is part of the government's duty to show that the mail was used in furtherance of the scheme in effecting the sale.

The Court: You see, don't you, the difference in the approach by the draftsman of the mail fraud statute and the draftsman of this act? The draftsman of the mail fraud statute started out talking about a scheme, it would be unlawful for anybody to devise a scheme to defraud anybody, and then to use the mails to do it. That is the approach [1299] of the mail fraud statute.

This statute approaches it from the opposite direction. It says: It shall be unlawful for anybody in the sale of any securities by the use of the mails to employ a fraudulent scheme in doing it.

Mr. Lucas: All right. Now we have proved, then, the scheme.

The Court: I am interested to know whether or not the draftsman of this indictment, whether he followed conventional form of indictments under the Securities Act in drawing this indictment? You may not know about that.

Mr. Lucas: I wouldn't know.

The Court: I should think that the draftsman of this indictment would have made the same approach to the Securities counts as the statute does; that instead of starting out with the allegation about the scheme, device, artifice in great detail, that he would have said that: Prior to the dates herein mentioned within the statute these defendants used the mail to sell securities and employed a fraudulent scheme in so doing, to-wit: —then set out what the fraudulent scheme was.

Mr. Lucas: I see what your Honor is getting at. It is the mechanical draftsmanship of the indictment.

However——

The Court: What he did was he followed the standard and conventional form and approach of mail fraud indictments, [1300] because that is the way the mail fraud statute does approach the subject, and he set out all of the scheme, and then he said he employed the mails to accomplish it.

That may be part of Mr. Rose's difficulty, and it may create some difficulties for me. I am not saying that at this moment.

Mr. Lucas: I think if he has alleged a public offense under this statute, whether he got the cart before the horse or the horse in the proper position, if he got the horse and the cart connected, under the law we have alleged the public offense. It makes little difference, as I see it, your Honor, whether he had started out as your Honor indi-



cated the draftsmanship of the act is, or using the manner which he did, if——

The Court: Mr. Rose has been arguing for some time today that that letter back there, the one with the named purchasers, was not fraudulent itself in any respect; it was just a transmittal of a certificate of stock which he had previously been induced to purchase. So, looking at this statute, which says, “It shall be unlawful for any person in the sale of any securities by the use of the mails ——” —see?

Mr. Lucas: That’s right.

The Court: “——to employ any device, scheme or artifice to defraud.”

He said this was not any device to defraud, this [1301] letter of merely sending her a share of stock.

He didn’t say it, but his argument logically leads to this: If the letter had been a come-on letter, contained some misrepresentations itself, see what I mean? that that would have been employing a device to defraud.

Mr. Lucas: I see what your Honor means, but I do not think that the statutes, I mean that the courts, either the trial courts or the circuit, have put that construction on it.

The Court: I suppose not from what you have said. I am going to look at the decisions this evening.

Mr. Lucas: I am quite satisfied that the courts have construed——

The Court: The same as the mail fraud statute?

Mr. Lucas: The same as the mail fraud, if the instrumentalities of commerce are used in effecting or bringing about——

The Court: Why not use the words of the mail fraud statute to execute the fraud?

Mr. Lucas: To effectuate or——

The Court: This statute does not use the word “execute” or to effectuate the fraud. It says: It shall be unlawful in the sale of any securities by the use of the mails to employ any device to defraud.

So, to make this statute fit your facts here you have to say that these people got up a scheme, fraudulent scheme, [1302] and then they sold securities by mail and they employed that scheme previously gotten up to defraud these people.

Mr. Lucas: Quite right; and used the instrumentalities or used the mail, in this case, to effect the sale. Therefore, when we come to a construction of the mail fraud, we find that the courts have said if the mails are used after the scheme is perfected but not in furtherance of the scheme, but after it is complete, that the offense is not committed. Therefore, I take it——

The Court: In other words, you think the emphasis on the Securities Act is on the use of the mails——

Mr. Lucas: On the sale.

The Court: ——distinguished from the mail fraud statute where it emphasizes the use of the mails in executing the fraud?

Mr. Lucas: That’s right, that is my approach to it, your Honor.

Now, then, in that light, I say to your Honor that when we bring into evidence this letter addressed to Mrs. Parsons in which it says, "Enclosed herewith you will find certificates of Trinidad International Petroleum in your name as follows: \* \* \* Kindly sign the receipt," and so forth, that it is directly within the prohibited provisions or prohibited part of the law, and they are using the mail there directly to effect the sale.

The Court: Making a delivery? [1303]

Mr. Lucas: Making a delivery.

The Court: Mr. Rose challenged you on two things. One was something about the Canada mining stocks. You are the one that was challenged; you ought to remember it better than I do.

Mr. Lucas: Mr. Rose challenged me on so many things.

Mr. Rose: I stated Mr. Carter's testimony was in response to a direct question of yours whether he ever discussed the subject with Danziger of Canadian mining stock, and he said he is quite sure he never did. That is his testimony. [1304]

Mr. Lucas: Without being facetious at all, Mr. Rose, in response to the query of the court, whether the testimony is as Mr. Rose remembers it or whether it is not makes little difference, if the government has proven the scheme and device to defraud and has achieved that by all the testimony that is in the record, I am not going to quarrel about some isolated piece or portion thereof. I do not subscribe to any proposition that we are limited to the concoction of the scheme between De

Hart for the Geat Eastern and Danziger for himself and Wake and Trinidad in that hotel room in New York.

The Court: What was your other challenge, Mr. Rose? Don't tell me you have forgotten it, because I have.

Mr. Rose: I said he charges in some of these counts that these checks were deposited in the mails by the defendant. There isn't a scintilla——

The Court: Yes. What I want to know is how did they get in the case? I have notes, but——

Mr. Rose: They got in the case, your Honor, in this manner: Mr. Mainland produced these checks, and ostensibly he picked them up in the course of his investigation from the banks upon whom the money is drawn, and counsel then proceeded to do this. introduce through the Bank of America clerk—those are the first group of exhibits, your Honor, starting with No. 2, he brought in the clerk of the Bank of America and asked him whether his records reflect, [1305] for example, here that a check in the sum of a thousand dollars, which is Exhibit No. 1, was presented to the Bank of Manhattan Company in New York and whether they collected the proceeds of it, and he said his records so reflect. I pointed out that there is no proof that any of these defendants ever deposited that check in the mail; assuming that they did do it, I said it wouldn't make any difference, it doesn't violate this Act. Where is his proof that any of these defendants deposited these checks in



the mail? I said for all we know they have thrown them with a rocket or something.

Mr. Lucas: Now, to answer the court's question about how these checks got in the mail. The man from the Bank, Mr. Ladd, I believe, came up and testified that as to each and all and every of these checks, with a possible exception of one, and that is only clouded with some doubt, and it is not a count check at that, they were deposited for collection by Wake Development Company, and transmitted by that bank——

The Court: How did he know that?

Mr. Lucas: From his records that he had in front of him.

The Court: Did you give him these checks?

Mr. Lucas: Yes, they were handed right to him.

The Court: He identified them by some comparable records? [1306]

Mr. Lucas: That's right.

The Court: He would have no recollection of the particular check?

Mr. Lucas: No. He testified from his collection record. In each case, your Honor, there is a collection record.

I show you, for instance, Exhibit No. 9, I don't know whether that is a count or not, but——

The Court: Just tell me what is in it.

Mr. Lucas: A bank collection record is attached which says: "Permanent record," the name of the bank on which the check is drawn, from whom it is sent, the time and date of its sending——

The Court: The data is the same as on these

checks showing the date, the amount, and the bank on which drawn?

Mr. Lucas: Yes.

The Court: And in whose account deposited?

Mr. Lucas: Yes. The amount of it and the special requirement of "Please wire" or "Advise payment" and so on. That is on each of them.

The Court: All right.

Mr. Lucas: That witness testified that his records showed that they were sent to their correspondent bank in New York, and there cashed and cleared, and in each instance the check was paid and credit was given to the account. [1307]

On that I am very happy to answer both the court and counsel as to what the Supreme Court said about what would be the inference to be drawn from that sort of a transaction.

In the case of K-a-n-n vs. United States——

Mr. Rose: Is that C-o-n-n?

Mr. Lucas: No; K-a-n-n, vs. United States of America, decided December 4, 1944, being an appeal for certiorari from the Fourth Circuit, I don't know whether your Honor is familiar with this case or not, but it had this business of the passing of checks. It said this:

"With respect to the second contention, while there may be some question as to whether the defendants may be said to have caused the mailing of the checks, we think it a fair inference that those defendants who drew or those who cashed the checks believed that the bank which took them would mail them to the banks on which they were

drawn, and assuming the petitioner participated in the scheme to defraud," and so forth, "their knowledge was his knowledge."

That very succinctly and clearly takes care of all these mailings.

The Court: Do you have any other outstanding authority that you want me to look at on this general subject during the intermission?

Mr. Lucas: Yes. I would like to review for the court [1308] briefly here, some of the questions that may be——

The Court: Before we leave the Tether account, how was your case lame as to that?

Mr. Lucas: The seventh count, if the court please, Mr. Tether, who was named in that count, was dead, and we couldn't get ahold of him, and we couldn't produce here any of the original mailings. So, while I believe there is some meager evidence obtained from Mr. Danziger, carbon copies and what not in his files, that he gave to Mr. Mainland——

The Court: Now, Parsons, Lawyer, Pitts, Russell, Skinner, E. Barrie Smith, did your witness——

Mr. Lucas: Carter testified as to having talked with every one of them.

The Court: With all of them?

Mr. Lucas: Yes, indeed. So the only count on which the government concedes that it has not offered evidence of a convincing character is count seven.

Counsel in his argument said something about the mailing or causing to be mailed of these things.

I take it that it being in evidence it is too late to make that objection, but were it legally possible to make that objection at this time, I say that in the case of *Clark vs. United States* in 134 Fed. (2d) 538, they held as follows under this Section 338:

“The offense committed—— [1309]

Mr. Rose: 338 has no application to counts one to seven.

Mr. Lucas: Please don't interrupt me, counsel.

Mr. Rose: I would like to follow you. I take it you are not secretly addressing the court, but you intend to convey some position maintained by you in support of your case here, and I think I ought to know what you are talking about.

Mr. Lucas: I think you follow me, counsel, but at a great distance.

Mr. Rose: You are very difficult to follow.

Mr. Lucas: Under this Section, 338, they are speaking of—that is the mail fraud:

“The offense is committed when the mails are used for the purpose of executing such scheme or attempting to do so, and it is unnecessary that the defendant himself mail letters if he brought about the mailing.”

The Court: What I am interested in is whether you have some decision there which generally construes the Securities Act.

Mr. Lucas: Yes, there are some excerpts to be found, if the court please, in the annotations in Title 15. I particularly call the court's attention to that reference, the *Coplin* case, which is found



on page 464 of that volume you have in front of you, which is one of the leading cases [1310] in the Ninth Circuit on what is necessary to be proved. Of course, there they were using the telephone. And on 465, under the sufficiency to show violation, I would call your attention there to the citation of Landay vs. United States, evidence showing promoters and so forth. And the one immediately below that, the case of Kobald——

Mr. Rose: Is that the decision by Judge Stephens? Which one are you quoting from?

Mr. Lucas: I don't know. No, this one I last quoted was——

Mr. Rose: I mean the one that you say——

Mr. Lucas: The Coplin case?

Mr. Rose: Yes. Is that the decision by Judge Stephens?

Mr. Lucas: I don't know, Mr. Rose. It arose in Seattle.

Those two cases there on page 465 are very worthy of note, if the court please.

The Court: What two on 465? Landay and what else?

Mr. Lucas: Landay and the one immediately above that, Kobald-Quinn and Company vs. United States, down in Georgia. And the one immediately below that—well, that is another citation of the Kobald decision.

Going over to the question of the charging portion of this indictment, I would direct your Honor's attention to page 462 in the next to the last paragraph in the left-hand column there, the case

of Bogy, a very celebrated case, [1311] construing the Securities Act, having to do with the sale and the definition of a sale.

Then on page 460, subdivision 10 under the head of "Use of mails," that case there Securities and Exchange Commission vs. Time Trust Incorporated, that is a District Court of California case found in 28 Sup., I am not familiar with it.

With regard to the mailing and as to whether or not the mailing after the transaction is complete is within the meaning of the Section, I refer your Honor to the District Court of the Northern District of Georgia.

The Court: What do you mean after the transaction is complete?

Mr. Lucas: In this one case, for instance, they have said here—they raised the question of whether or not it is in furtherance of it. If that particular part, if that phase of it is applicable to this Securities Act, I say that we have met in each instance here—if your Honor will examine it, the particular mail matter, you will see that we have exercised great care to select those pieces of mail matter which on their face shows that the transaction is not complete and therefore it is in furtherance of the scheme, or in furtherance of the sale, not after it is completed. This Georgia case even goes so far as to say that the mailing of a confirmation——

The Court: What are the next group of counts?

Mr. Lucas: Now, your Honor, the next four——

The Court: Are registration counts?

Mr. Lucas: Are registration counts.

The Court: You be prepared to move as to them when I come back in 10 minutes, Mr. Rose.

(A short recess was taken.)

Mr. Rose: With your Honor's permission, there has been some reference made to some cases here, in the case of *Holmes vs. United States*, 134 Federal Reporter, 2nd Series, 125, reading from the syllabus one to six, on page 129—incidentally, this is 15 U.S.C., 77 q (a) (1), which is the count we are talking about here, under discussion of requisites of proof, it says, quoting from *Hammer vs. United States*, 271 U.S. 620:

"In each count of the indictment the falsity of the scheme is charged. This necessitated proof of the fraudulent character of the scheme and the falsity of the representations, and a denial of the bona fide character of the scheme." Citing a Circuit Court case.

In other words, I mention that so opposing counsel will have in mind the elements that he apparently fails to recognize as incumbent upon him to offer proof to and as I pointed out in this *United States vs. Monjar* case, the mailing in each particular instance must be set forth and pleaded, that said mailing constituted and was [1313] intended as a fraudulent act, and so forth.

We are up to count eight, are we? No, we are up to count nine.

The Clerk: Eight.

Mr. Lucas: Eight.

Mr. Rose: At this time, your Honor, on behalf of the defendant Danziger, individually, I move to quash and dismiss count eight upon the following grounds, severally, that said count purports to charge that on January 26, 1939, the defendants place in the mails in this district here to be delivered to Michael Burns a letter of transmittal, including a stock and note certificate, in order to deliver the same after a sale, referring to said stock; and the purported offense designated in said count purports to be an infraction of the law, it is specifically set forth here as Section 5 (a) Subdivision (2) of the Securities Act of 1933, and the same nomenclature will be found in the Statute 15 U.S.C. Section 77e Subdivision (a) in Part 20 thereof.

Now, in that connection, Section 5 (a) Subdivision (2) relates and pertains to a prohibition relating to interstate commerce in the mails, and reads as follows:

“Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—” And Subdivision (2) is: [1314] “to carry or to cause to be carried through the mails or interstate commerce any such security for the purpose of sale or for delivery after sale \* \* \*”

In conjunction with said section, your Honor, there must be, necessarily, considered Section 3 (a) of the Act, and its subdivisions, which is an exempted proviso in respect to such acts as are set



forth in this Securities Act, unless otherwise specified.

Now, for example, in 17 (a) Section (3), as your Honor will remember, it expressly says that the provisos of Section 3 do not apply to the matters that are proscribed by said Act. In other words, it doesn't make any difference. You discussed here a moment ago, your Honor, with opposing counsel, what are the elements of the offense under that Section 17, Subdivision (1)? It doesn't make any difference if that plan and those acts are committed whether you are registered or not registered, and it expressly throws out Section 3 to which I am going to allude in a moment.

Now, Section 3 of this Act, Subdivision (a) reads as follows:

“Except as hereinafter expressly provided, the provisions of this Title shall not apply to any of the following classes of securities.” And then the part that is applicable here is Subdivision (1):

“Any security which, prior to or within sixty days after the enactment of this Title, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to said sixty days;”

In this connection, the undisputed evidence and proofs are that the securities here involved, and which were assertedly sold to Burns, was the privately owned security of the Wake Development Company, that these stocks had been regularly is-

sued as set forth in Section 3, that it was prior to and within 60 days after the enactment of this Title it had been sold or disposed of, that is what happened here, by the issuer. In other words, the Trinidad Company was the issuer, and had issued long prior—as a matter of fact, you have got an additional point that I am making here, your *ex post facto* element to consider—there is no contention that can be supported by any proof in this record that—this particular stock that is involved in count eight had been regularly issued and transferred prior to the enactment of this section, and expressly comes within the exemption features of this Act. In other words, there can be no violation in this transaction. In other words, Wake having lawfully come into possession of the block of shares, as shown by the evidence here, could [1316] without regard to the Securities Act send a part of that or all of it in the mails to Burns, Jones, or anybody else in the universe, and it doesn't constitute a public offense.

Your Honor has in mind, tied into this count eight, none of these preamble accounts of scheme, device, and all that business. That is a separate and distinct count without realleging or adopting by reference anything. And it says that Jacob Morris Danziger, also known as so and so, Warren Carter, also known as—I am not going to take the time to read that, Trinidad International, and Wake Development Company, and somebody else here, a man named Wright, about whom we know nothing up to this point, anyhow, defendants, did

on the 26th of January, 1939, in this district unlawfully, and feloniously cause to be carried through the United States mails certain securities; then they describe the particular two certificates, facsimiles of which, or, more accurately, photostatic copies of which are affixed, and set forth as a part of the allegations of this count; and it is contended, as I pointed out, that the transmittal through the mails to Burns in Peekskill, New York, was a violation of this section.

Now, I state, first, that it is requisite for your Honor to entertain and consider the applicability of the fact of the exemptions specified in Section 3 (a) of the Act and Subdivision (1), in particularity, and consider the evidence as to the legal status of the securities [1317] involved, namely, that the securities which are here asserted to have been transmitted are by the records shown to have been the personally owned securities of Wake Development Company. There has been no evidence submitted to this court which contends that that is not a fact. The evidence they put on is the testimony, even our friend Mr. Warren here says that in his first discussion with Mr. Danziger, Mr. Danziger said that the particular stock which ultimately found its way into that escrow with that trust company in Delaware was the personally owned stock of Wake Development Company, had been issued prior to the enactment of the Securities Act, and that it did not come under the provisions of the Securities Act at all, and that it was exempted under the Act. Now, this transaction is no dif-

ferent than if I took a certificate of stock in the Edison Company, which stands of record in my name, and I could mail it to anybody, including the sons of Jehovah, anywhere in the universe, and it couldn't constitute a public offense.

Now, the Edison Company stock would not be any different than the Trinidad Company, regardless of what opposing counsel thinks about the characteristics of that company. Here it is sought to charge that the placing of that in the mail, feloniously, incidentally—I don't know why that was put in there, the Act doesn't say anything about felonious or otherwise; the Act says in [1318] Section 5, Subdivision (2), as I pointed out:

“unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—(2) to carry or cause to be carried through the mails \* \* \*”

The Court: Is it a misdemeanor?

Mr. Rose: I don't remember.

The Court: Mr. Lucas, do you know the penalties?

Mr. Lucas: The penalties are the same for any violation of the Act, your Honor.

Mr. Rose: Frankly, your Honor, I wasn't for my consideration of this case very much concerned about the penalties, and I say to your Honor in all frankness that I never took the trouble to look into that phase of this case. I assume if counsel makes the statement that may be the case. I don't know anything about the penalty provisos of this section.

On the additional ground, your Honor, there is



no evidence to show that these two securities were in fact placed or caused to be placed in the mails by Mr. Danziger. The exhibit and the charging part of the acts and what they are are augmented in this count by attachment of an envelope addressed to Michael Burns with a postmark on the stationery of the Wake Development Company, bearing the signature of the secretary thereof. That is all the [1319] evidence we have.

Therefore, on each and all of the grounds submitted, I move that the motion to quash, dismiss and annul said count, be granted as to the defendant Danziger.

The Court: Decision is reserved.

Mr. Rose: In behalf of the defendant Trinidad International Petroleum Company I move to quash said count, annul and dismiss same as to the defendant Trinidad International Petroleum Company, upon all of the ground heretofore submitted in support of the motion in behalf of the defendant Danziger, which grounds I hereby adopt with your Honor's permission by reference as if they were restated and reiterated to the court on said motion.

The Court: Decision is reserved.

Mr. Rose: As to the defendant Wake Development Company I move that the said count eight be quashed, annulled, and dismissed on each of the grounds set forth in behalf of the defendant J. M. Danziger, and adopt the said grounds by reference; and the further ground that the transmittal of the securities referred to in said letter are expressly exempted under the statutes, Section 3 (a), Sub-

division (1) of the Act, and that there is no evidence to support that in this transaction there was a violation of the statute or statutes, rather, referred to in said count.

The Court: Decision is reserved.

Mr. Rose: At this time, your Honor, I address to the [1320] court a motion in behalf of the defendant J. M. Danziger, individually, to quash, annul and dismiss count nine of the indictment upon the following grounds, severally: That in said count it is sought to charge all of the defendants therein named with having assertedly committed a violation of Section 5 (a), Subdivision (2) of the Securities Act, 15 U.S.C., Section 77e (a) (2); that said count purports to assert the commission of a public offense, namely, the violation of the sections outlined by reason of the defendants having assertedly on the 18th day of May, 1939, in this district feloniously caused to be carried in the mails Trinidad International Petroleum securities for the purpose of sale and delivery to Florence Lawyer, no registration statement being in effect as to such securities.

Will your Honor look at this indictment, or will it be sufficient if I just mention it?

The Court: Yes.

Mr. Rose: I want to call particular attention to the fact that on line 20, page 26 of said indictment the draftsman has sought to use this particular and specific language, and I made a mental note of it at the time, he says, "no registration statement being in effect as to such securities." I am quite

certain it is apparent to your Honor what I have in mind. We won't waste much time in my giving some expression to the thought I have in mind. Since an allegation of this kind, as we see by the authorities, must be pleaded with particularity, and it must be construed in the language employed, we have in addition to the observations that I have already made about it, the allegation without any alternative that there was no registration statement in effect as to such securities.

It doesn't say as to said securities, the securities sent to Florence Lawyer in Yonkers, New York, but the antecedent to which reference is had by force of the language selected here must logically be interpreted that they were alleging that there was no registration as to Trinidad International Petroleum stock. They don't say that these particular shares that were transmitted weren't registered.

Then we come squarely into the state of the record, independent of all other matters that I have presented, that Exhibit A in evidence here shows that the Trinidad International Petroleum, Ltd., stock was registered with the Securities and Exchange Commission, and that the prospectus was authorized as to such stock, and there is no dispute in this case whatsoever that the Trinidad International Petroleum Company, one of the defendants who they claim committed this violation, contrary to this allegation, did have a registration in effect as to such securities, namely, as to the antecedent of that. They don't say to this particular certificate, they don't even take the trouble to even

describe the certificate; they merely talk [1322] of the number of shares.

It shows you when they drew this omnibus indictment there they literally resorted to the process of throwing the book, particularly at Mr. Danziger, and they didn't seem to think that it was incumbent upon them to charge any particular acts.

You can see the way this case has been presented to your Honor here and the constant repetition by opposing counsel of this scheme and plan, all this business and all the sins of Warren and Carter coming down on our heads.

I state to your Honor in support of my motion in connection with this particular count that, firstly, the allegation is completely lacking in supporting evidence, in fact, they themselves, according to the evidence here have shown that a registration statement was in effect concerning the securities.

Mind you, your Honor, I don't want you to think that I am resorting to a little sharp practice here, or something; I want your Honor to clearly know that I am submitting it on that ground, not contending that the securities sold were in fact the securities mentioned in Exhibit A. I want your Honor to have that clearly in mind. I am not pretending to try to submit to your Honor that I am arguing that the shares transmitted, if such is established by the evidence, to Mrs. Lawyer, as alleged in this count, were in fact the securities authorized by [1323] Exhibit A. On the contrary, I want it clearly understood by your Honor that my position as to the factual background here is



that the securities referred to in count nine are the securities that were personally owned by the Wake Development Company as a part of their shares of stock in the Trinidad Company, and that by reason of Section 3 (a), Subdivision (1) of the Securities Act was exempt from being subject to the charge that this transmittal allegedly violated Section 5 (a), Subdivision (2). I am submitting it in addition to the other grounds upon the ground that it affirmatively appears here that the stock referred to in count nine was, in fact, exempt from that Act; but I urge as additional grounds, I hope I am making myself clear, the fact that the charge is not that these particular shares or that particular certificate—they don't mention it here, they just mention the number, and they speak of the shares. On the further ground that the allegations of count nine—I might correct that, the Exhibit attached to it is this letter of May 18?

Mr. Lucas: You should have a photostat attached right to the count.

Mr. Rose: Are there any stock certificates also in count nine?

Mr. Lucas: Yes, we have provided you a picture of the shares of the stock and the preferential profit-sharing note. [1324]

Mr. Rose: I am not contending that I wasn't provided; these things have slipped off my copy. May I take a glance at this?

Mr. Lucas: Yes.

Mr. Rose: Where am I on the motion?

(The record was read.)

Mr. Rose: —are insufficient and contrary to the established facts of record and of evidence, namely, that such securities were in fact registered, upon the ground that the photostats which are incorporated and constitute a part of the allegation of count nine show on their face that they were not the act of the defendant J. M. Danziger, that is the act or part of said act of transmittal; or is there any evidence that he authorized or, in fact, placed the same or caused the same to be placed in the mail as therein alleged. And upon each and all of the grounds I heretofore indicated for the reasons expressed, I move the court grant the motions in behalf of said defendant.

The Court: Decision is reserved.

Mr. Rose: At this time I submit a motion to quash, dismiss and annul count nine as to the defendant Trinidad International Petroleum for the reasons and upon all the grounds heretofore submitted in support of the motion made in behalf of defendant Danziger as an individual, with the same force and effect as if they were reiterated. [1325]

The Court: Decision is reserved.

Mr. Rose: I at this time make a motion to dismiss all of count nine, the quashing of said count and annulling of same in behalf of the defendant Wake Development Company, a corporation, for all of the reasons heretofore submitted in support of the motion on the part of the defendant J. M. Danziger, individually, and for the further reason that the documentary and oral testimony here established without equivocation or qualification that

the securities inferentially referred to in said count was the privately owned stock of said corporate defendant issued long prior to the enactment of the Securities Act, and clearly within the exemption provisos as established by Section 3 (a), Subdivision (1) of said Securities Act.

The Court: Decision is reserved.

Mr. Rose: At this time I submit to the court a motion on behalf of the defendant J. M. Danziger to quash, dismiss and annul count ten of the indictment herein upon the following grounds, that said count purports to charge that all of the defendants named in the indictment did on the 20th day of February, 1939, feloniously cause to be carried in the U. S. mails certain shares of stock of the Trinidad International Petroleum, and these preferential notes, for the purpose of sale and delivery to Harry F. Pitts; said purported acts were reputed to constitute and charge these defendants with such acts being contrary to the provisos of Section 5 (a), Subdivision (2) of the Securities Act of 1933, and 15 U.S.C. Section 77e, Subdivision (a), Part (2).

In this case we have the similar situation of an allegation that no registration statement being in effect as to such securities as distinguished from the said securities; and I will, with your Honor's permission, adopt all of the grounds and reasons in support of the said motion as to count ten in behalf of the defendant J. M. Danziger as were addressed to the court to an asserted similar transaction in the preceding count nine, as if those mat-

ters were restated, and particularly on the grounds that the evidence here shows that the particular securities, even if we are to assume that they are speaking of certain shares as said securities, that the same, necessarily and by reason of the evidence fails to constitute a public offense in that said securities, if any, that were transmitted as alleged in said count ten were and are expressly exempt by reason of Section 3 (a), Subdivision (1) of the Securities Act, and by reason of the fact that the uncontradicted evidence in this record shows that said securities out of which these alleged certificates were a part were issued long prior to the enactment of this Act, and that such enactment, even were it not as contended by us subject to the exemptions of 3 (a), Subdivision (1), would be *ex post facto* for that reason null and void; and on the further ground that there is no evidence to show [1327] that the defendant J. M. Danziger authorized, participated in, or in fact was privy to the placing of this particular letter, envelope and its enclosures in the mail as charged in said count ten or at all.

The Court: Decision will be reserved.

Mr. Rose: In behalf of the defendant Trinidad International Petroleum Corporation, I move the quashing, annulling and dismissal of count number ten as to said corporate defendant by reason of and upon all of the grounds submitted in support of the motion in behalf of the defendant, individually, J. M. Danziger, as to said count ten, and adopt each of said grounds and reasons, by reference, as if the



same were reiterated at this time in support of a motion in behalf of said defendant.

The Court: Decision will be reserved.

Mr. Rose: I make the same motion to quash, annul and dismiss said count ten as to defendant Wake Development Company by reason of and upon the grounds addressed to your Honor in behalf of defendant J. M. Danziger's similar motion, as to said count, and adopt similar reasons and grounds stated by reference as if the same were addressed to this court in support of the motion on behalf of this particular corporate defendant.

The Court: Decision will be reserved.

Mr. Rose: I now submit to your Honor a motion on behalf of the defendant J. M. Danziger as to count eleven [1328] of this indictment, and move the said count be quashed, annulled, and dismissed as to said defendant upon the grounds, one, that the allegations of said count eleven fails to allege the commission of a public offense as to said defendant.

In this regard I submit to your Honor that said count alleges that on October 4, 1939, the defendants unlawfully and feloniously caused to be carried through the U. S. mails certain securities of the Trinidad International Petroleum and the profit-sharing notes for the purpose of sale and delivery after sale to Adeline B. Skinner, no registration statement being in effect as to such security. Said count includes as part of its allegations as an alleged violation of Section 5 (a), Subdivision (2) of the Securities Act, 15 U.S.C., Section 77e (a)

(2), being a similar transaction in character as the preceding part; upon the grounds that it is not shown or alleged in said count that said securities were subject to the provisos of Section 5 (a), Subdivision (2), and so forth, and that the evidence here reflects as to the generalization of such securities of Trinidad International Petroleum that, in fact, they had registered, and in other respects that the purported shares of stock transmitted in this particular transaction as set forth in this count were in fact shares of stock that were privately owned by the Wake Development Corporation, they had by them been acquired prior to the enactment of the [1329] Securities Act of 1933, and irrespective of the fact that the Securities Act as to the said securities was ex post facto, that Section 3 (a) of the Act, Subdivision (1), in fact, exempted said securities.

And as to the defendant J. M. Danziger, that said allegations do not constitute a public offense as to him or at all.

I submit the motion on each of the grounds and for the reasons herein stated.

The Court: Decision will be reserved.

Mr. Rose: At this time, your Honor, in behalf of the Trinidad International Petroleum Company I submit the motion to quash, annul and dismiss and set aside said count eleven of this indictment for the reasons and upon the grounds addressed to this court in the motion as to this count in behalf of the defendant J. M. Danziger, and I adopt said grounds and reasons by reference with the same

force and effect as if they were reiterated as to the defendant Trinidad International Petroleum Company.

The Court: Decision will be reserved.

Mr. Rose: I now move that your Honor enter an order of dismissal as to count number eleven, as against the Wake Development Company, for the reasons and upon the grounds heretofore addressed to the court in support of the motion as to this particular count in behalf of the defendant J. M. Danziger, individually, and by reason and [1330] particularly of the fact that the undisputed testimony in regard to Wake Development Company was that it was at all times charged in this indictment handling and dealing with, insofar as that corporate defendant is concerned, with its privately owned securities in the Trinidad International Petroleum Company, and for that reason is expressly exempt under Section 3 (a), Subdivision (1) of the Securities Act.

The Court: Decision will be reserved.

Now, Mr. Lucas, state your position as to the registration counts.

Mr. Lucas: Very quickly, and I think easily stated, your Honor, Defendants' Exhibit A in evidence, has reference to a registration statement of the Treasury stock of the Trinidad International Petroleum. It sets up they wanted to sell one hundred thousand shares of Treasury stock at \$5.00 a share to be paid in cash in currency of the United States or Canada.

Page 9 of that sets up what is going to be done

with the money, how it is going to be handled, the money that will accrue after the payment of the brokerage commissions, I believe, for \$400,000.00 to be used by the company. That is Treasury stock.

What we charge is that the Wake Development Company was selling to the public in Pennsylvania, Ohio, New Jersey, Massachusetts, part of its stock for which there was no registration on file, that they were issuing it, and that [1331] under the law they had to have a registration statement on file before they could sell and issue it. It is very simple. The issue that is referred to there is 100,000 shares of the Treasury stock of the Trinidad at a fixed price. What we charge them with doing is selling an altogether different stock at a different price, under different conditions, and not having any registration on file covering it or concerning it.

Now, Trinidad is involved because Trinidad through its president signed Trinidad stock certificates, through its secretary signed Trinidad stock certificates, aided, abetted and assisted the Wake Development Company and its common president, Mr. Danziger, in putting that deal over. So that part is very simple.

The indictment alleges that the securities were sold in violation of the registration provisions of the Securities Act. Trinidad Corporation did in 1934 file a registration statement with the Securities and Exchange Commission. Under that statement Trinidad proposed to offer 100,000 shares of the Common Treasury stock for \$5.00. That statement became effective and the offering as described



in that statement and the prospectus in connection therewith could have properly and legally been made. That offering by that issuer at that price and of that stock was not made.

Mr. Rose: Are you reading from the indictment? [1332]

Mr. Lucas: No, I am not.

The last sentence of the Securities Act of 1933 specifically provides that:

“A registration statement shall be deemed effective only as to the securities so specified therein as proposed to be offered.”

The violations alleged in the indictment involve sales by Wake Development Company of Common Capital stock and preferential profit-sharing notes which are not mentioned in that registration statement, issued by Trinidad International Petroleum in units of one share and one pound note, at an offering price of \$3.00 in cash plus certain shares of other defunct corporations.

These shares and notes were owned by Wake, and the stock was not Treasury stock of Trinidad.

Furthermore, the proceeds of the sale were intended to be retained and were retained by Wake Development Company, no registration statement was ever filed covering shares and notes sold and delivered by Wake as alleged in the indictment, and it is very quickly and easily said. Trinidad comes into the deal not that they issued them directly, but through their president and secretary participated in it, aided and assisted by the signing of the certificates.

There is one thing I do want to call the court's attention to in connection with this count, with one of [1333] these counts, count eleven. There is not, as the court can see, a photostatic copy of the shares of stock and profit-sharing notes. We were unable to provide them. We have in the evidence the carbon copy of the letter that is attached to the indictment procured from Mr. Danziger in which he says he is sending them. Mr. Carter says he sold them, and Mrs. Skinner was here and says she received them. So, I take it we have met the full measure of proof. I did, however, want to call that differentiating fact to the court's attention.

The Court: What section of the statute do you rely on?

Mr. Lucas: We are relying on Section 77e as it is found in your book there, your Honor, Sub-section (2).

The Court: What page?

Mr. Lucas: Page 436.

Mr. Rose: That is the same as 5 (a). You charge them in both forms in your indictment.

Mr. Lucas: It says:

“Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or interstate commerce by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.”

The Court: What about the exemptions, Mr. Lucas, that [1334] Mr. Rose mentioned?

Mr. Lucas: It is an elementary principle of law, both in Federal and State, that in pleading an offense or charging criminal offense the indictment does not have to plead the exemptions.

The Court: I know, but what is the fact about the exemptions that he relies on?

Mr. Lucas: The exemption, I gather from following counsel's argument, he says it is exempted because this registration statement here refers to the same stock.

Mr. Rose: No.

Mr. Lucas: I don't follow him.

Mr. Rose: Then I don't think you understand the point at all. Shall I repeat it to him?

The Court: Repeat it to me.

Mr. Rose: My point in referring to Exhibit A, Mr. Lucas, was picking out a particular nomenclature in the charging part of the indictment, instead of referring to said shares it says, "such securities." That was merely an incidental point. If you paid any attention, I particularly indicated to his Honor I didn't want his Honor to get the impression I was quibbling here or trying to raise the contention that the shares actually involved in these counts were the shares that were specified under this registration. My contention is that the uncontradicted evidence, the documents that you introduced in evidence, [1335] expressly points out that this is not Treasury stock. It is the privately owned stock of Wake Development. Carter testified here as your witness in support of your case that at the beginning of this meeting there was a discussion

had that these particular securities that were sought to be sold was the privately owned stock of Wake Development Company, and the shares that they had acquired in a lawful and legal manner as their personally owned stock, and for that reason said shares were exempt under—if you will read the Securities Act—Section 3 (a), Subdivision (1).

The Court: What page is that on my book?

Mr. Rose: Your Honor, I haven't it. I think it is 77q—it is either (c) or (d), your Honor.

Mr. Mainland: (c).

The Court: What page, Mr. Mainland?

Mr. Lucas: That is "securities exempted," page 432.

It is very simple, your Honor, as long as Wake Development Company had these shares of stock, this 165,000 shares and kept them and didn't attempt to make a public offering of them, we do not contend that they had to be registered, any registration statement on file, as long as they had those shares of stock; Wake Development Company had received them three or four or five years beforehand.

The Court: Start again, please.

Mr. Lucas: As long as Wake Development Company kept their shares, of course they didn't have to file a [1336] registration statement; but when it began selling those shares as provided here they couldn't sell them legally without violating the law until they put a registration statement on file. That they never did.

The Court: I have never worked with this stat-



ute particularly, although I do know that the S. E. C. like every other agency, wants to broaden its authority as much as it can. That is one of the problems of modern government.

Mr. Lucas: Quite true.

The Court: And probably includes Federal courts, although they have been held pretty closely within bounds. Within recent months, for instances, I have had the claim presented to me in my own district that a sale of real estate contracts is a security within the meaning of the Securities Act, see? That would be pretty poisonous to you Southern California people, when you get around to capitalizing on your climate, as soon as the war is over. If you found that every time a fellow wanted to make a fast deal up the street here on a piece of property, that it had to be registered with the Securities and Exchange Commission, you couldn't sell a piece of property half a dozen times a day, under those provisions.

So, I am not just going to pass over this question maybe as quickly as justified, just because of my natural caution about claims of all modern governmental agencies to [1337] broaden their jurisdiction.

I haven't worked much with the Securities Act, so that is another reason why I am cautious.

Is it the general claim that every security which is sold—I am not using the word “traded in”—every security which is sold must have been registered by somebody at sometime?

Mr. Lucas: If you are going to adopt an analogy or illustration, such as Mr. Rose used here about

the sale of some privately owned Southern California Gas stock, no, of course not. Here the government is interested in this because we don't have any fraud, scheme or design, or anything, we just have got to have a public offering.

The Court: Where is that in this statute? Where is the reference to public offering in this statute?

Mr. Lucas: These offerings or public sales are provided in here——

The Court: Where is that in this statute? Where is the distinction between a public offering and a private sale in this statute?

Mr. Lucas: The point is this, that is where we get back to this exemption thing; every sale must be registered as it says here, unless you come within the exemption. And if you come within the exemption, you should be able to put your finger on it and say, "I am exempt under this one." The defense comes along now and says they are exempt because [1338] there was a registration covering that.

Mr. Rose: You are missing the point entirely. You are attaching a lot of importance, Mr. Lucas, to a very technical point that I addressed to the court, and you are missing the point that his Honor is talking about here, and upon which I relied principally.

The Court: The distinction is made in the early blue sky act as to what is a public offering and what is not, how extensive an offering had to be to be a public offering, and whether the security was a private holding.

Mr. Rose: With your Honor's permission, I failed to point out to your Honor that Section 4 of this Securities Act states, "the provisions of Section 5"—that is a funny set up; they set it up before they come to Section 5—"The provisions of Sections 5 shall not apply to any of the following transactions: Transactions by any person other than an issuer, underwriter or dealer;"

My point is that there you have their own Act. Wake Company was in this transaction, they were neither an issuer or an underwriter, and they were not a dealer; they were selling their privately owned stock, that is the state of the record, and they can't get around it or behind it. Although I like to apply the broader view that your Honor has indicated, and as counsel is trying to point out, it would be all right if Wake hung onto that stock, but, good heavens, if they ever mail a part of it and put it in the mail to [1339] anybody, why, it is too bad, they have committed a public offense.

Mr. Lucas: Of course to say what the Securities and Exchange Commission would or would not do under a given set of circumstances is hard to prophesy about; but it certainly could not overlook the fact that Wake Development Company was holding 165,000 shares of stock that had been issued to it two or three years prior to the going into effect of the law, we will say, and it was holding it in that issued state. But it became an issuer within the meaning of this law the minute it began selling it, and the law says the sale of every security shall be premised or prefaced by a registration statement unless it comes within the exemptions.

The Court: How are private sales taken care of?

Mr. Lucas: Private sales are taken care of in one sense here. But I want to answer counsel when he says they weren't an issuer.

"The term 'issuer' means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of [1340] the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued"

and it goes on with a lot of exceptions.

That is found in your volume on page 129.

The Court: I don't know how the reporter did, but you talked too fast for me.

I want to talk about what I am interested in, not what you and Mr. Rose are interested in.

Mr. Lucas: Pardon me, your Honor. I didn't mean to ignore you.

The Court: Where is the exemption that said the sale of private stock is exempted.

Mr. Lucas: You won't find it in this section in the words that your Honor apparently is seeking. You won't find it set up that way.

The Court: Well, suppose I took Mr. Rose's



case, suppose I wanted to sell some Southern California Gas?

Mr. Lucas: You go ahead and sell it.

The Court: Why?

Mr. Lucas: You are permitted to. You are not an issuer, you are not making an offering, you are not making a public proposition, and the stock has been registered when [1341] it was sold to you; or if it was registered long prior to the Act, you go ahead with the private sale.

The Court: Now you are getting around to what I asked you 10 minutes ago. If it is not the Securities and Exchange Commission's position that any security must have been registered by somebody at some time, that is sold?

Mr. Lucas: Let's state it this way:—

Mr. Rose: Ask Mr. Mainland.

Mr. Lucas: If it were issued within 20 or 30 days prior to the going into effect of this Act they didn't have to reissue—

The Court: I am not discussing that question of the fact that these people became the owners of this before the Act came into effect. That is a fact, isn't it?

Mr. Lucas: True.

The Court: That isn't what I am talking about at all. Forget that.

Mr. Lucas: Then I misunderstood you.

The Court: This Act went into effect in '33, didn't it.

Mr. Lucas: Yes.

The Court: Suppose they got this stock in '34

under the circumstances they did, this Wake stock?

Mr. Lucas: Then it would be the position—if the Wake stock was issued, if the Trinidad stock was issued to Wake in '34 in the manner in which it was issued, it would [1342] have to receive the approval of the Securities and Exchange Commission. I am talking now of the 165,000 shares that Wake got.

The Court: That is just what I want to get at. I have heard this discussed in the profession; it is not entirely a new question to me.

Mr. Lucas: Mr. Mainland has pointed out to me the provisions of Section 4 under the caption "Exempted Transactions", and thinks it will answer your Honor's question, which provides as follows:

"The provisions of Section 5 shall not apply to any of the following transactions: Transactions by any person other than an issuer, underwriter or dealer;"

Now then, to check that through we have got to go back into who is an issuer and who is an underwriter and so forth, and we get into a very technical field, and the court is bound by the statutory definition of those persons.

Now, transactions by an issuer not involving a public offering, we have some room for a difference of opinion there, an honest difference of opinion as to whether such a deal whereby Wake got this 165,000 shares wouldn't be in under that. It may be under a proper construction of this section that would be an exemption.

The Court: Let's keep what happens to be the point that I am interested in right now. It is not an unfamiliar [1343] transaction, I am not taking any sides now on what was done here, but it is not an unusual transaction—in fact it is very common, I know of nothing more common in the profession than for a man to acquire some stock at the organization of the company when he turns in something that everybody feels is of some value; that is just as ordinary as riding on a street car to your work nowadays. There is hardly a country lawyer in the United States that hasn't organized a corporation and had some people turn in some stuff and take some stock for it. All right. After they get it, does every Tom, Dick and Harry in the United States, every little fellow of one hundred thirty million people in every one of the 48 States, regardless of the size of the transaction, after he has got that stock, does he have to go to the Securities and Exchange Commission and register it before he can sell it to his neighbors?

Mr. Mainland says no.

Mr. Lucas: I don't think so. But when it is offered in the manner in which it is offered as set forth by the testimony here——

The Court: I just want to get the emphasis placed here. If that is where you are going to put the emphasis, on how he disposes of it, his own private stock after he has it, then I want you to show me in the statute where that distinction is made. I want you to talk to me now as if I were a pretty resentful small town lawyer, one of [1344] the many

millions in this country who think they are being overgoverned by a whole lot, and who has just been told that he had done something wrong when he had made a deal for some very plain simple client in his community in organizing a corporation with a minimum capital stock authorized by the laws of his State, who turned in a little piece of property or a patent, or something like that, and when he told his client he could go out and sell a little piece of it to his neighbor for \$500.00, had just been told that he couldn't do that without getting it registered with the great white father in Washington, and making up all those forms. Now, what I want to know it does the emphasis come on the amount of stock that he wants to resell? Nobody can criticize him for acquiring stock in that way, that is his own business, the laws of his State permit him to do that; I think it could hardly be claimed that the S.E.C. has supervisory authority over that initial transaction, one man converting a little piece of property he has into corporate form for reasons of his own, that is nobody's business if he wants to do it that way. He takes some stock back, then, in exchange, and then when he has it a neighbor says, "Bill, I will give you \$500.00 for a third of your interest in that thing, maybe something will come of it some time," and he says, "All right," and they make the deal. I will be surprised if the S.E.C. claims under this Act that that initial transaction has to be [1345] subject to its supervision in any way whereby he incorporated his little project and took the stock for himself.



Now, then, passing that, is this sale that he made to his friend, is that unlawful unless he got it registered? Or is it when he set out to everybody in town and ran an ad in the paper and said, "I have got this stock and I offer it to whoever will come and take it away"? Is that where the emphasis is?

Mr. Lucas: Well, bearing in mind that we have all had some experience, as you say, with the various governmental agencies and the very human desire, I take it, on the part of every agency, and sometimes the courts, to show a jealous regard for their jurisdiction and to want to uphold their jurisdiction, we know that the Securities and Exchange Commission probably wants to assert and hold the jurisdiction to the extent that it possible can, and within the limits of this Act, and I would say that in my opinion—and I am frank to say to your Honor that I am touching the Securities and Exchange Act for the very first time—I in my very limited reading and study of it here would say that your Honor's proposition or illustration is within the reach of the Securities and Exchange Commission under this Act.

Now, that brings us to whether or not they may want or feel, as a matter of policy, that they want to assert it, their rights under it, or assert their jurisdiction in a [1346] particular case. But if that isn't a private transaction as lined up here, if it isn't a public offering, if it isn't this or if it isn't that, it has to be something else, and I would say that when that man assumed by your Honor by his illustration began to make a public offering of it,

and as we have shown here an indiscriminate offering through representatives throughout the various States, that it is clearly——

The Court: Where does the statute make that distinction, which is the distinction that the State Securities statutes make between public and private offerings?

Mr. Lucas: It is only by reading these exemptions. That is the very difficult part of this whole procedure.

The Court: In other words, you think the approach is this: that every sale of stock—we will use the much abused words “*prima facie*”—that every sale of stock which hasn’t been listed by somebody is *prima facie* within the Act?

Mr. Lucas: Every sale must be registered. I think it starts out with that premise, essentially, that every sale must be registered, every issue must be registered, rather. The statute gets into transactions and issues, if the court please, that is the way the statute runs. We talk about registering of an issue and registering of a transaction, exempted transactions and exempted issues; but, generally speaking, I think we can start with that [1347] premise, that every issue must be registered, then, except if it is exempt, and the defendant or the particular person charged must prove himself to be within the exemption. Then if we come to the transactions, we discuss the transactions and I think generally speaking we can say all transactions must be registered except, and then we have the exemptions.

I think that is the general trend and force of this entire enactment.

The Court: Well, we will have to quit because it is getting so late. We will pick up at 10:00 o'clock in the morning.

(Whereupon, at 4:55 o'clock p.m., January 31, 1945, an adjournment was taken until 10:00 o'clock a.m., Thursday, February 1, 1945.

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Los Angeles, California,

Thursday, February 1, 1945, 10:00 a.m.

The Clerk: 15173 United States vs. Danziger.

Mr. Lucas: Ready for the government, your Honor.

Mr. Rose: Ready.

The Court: We will go right away to the mail fraud counts, Mr. Rose. Make your motions as to them.

Mr. Rose: Your Honor has undoubtedly, if I may be permitted to refer your Honor to one case on the subject that was under discussion at the conclusion of the hearing yesterday——

The Court: You just hold that thought; we will come back to it. I want to hold my own schedule this morning and run right through the counts.

Mr. Rose: Very well, your Honor. Your Honor, in respect to count number twelve—we have reached up to twelve, haven't we?

Mr. Lucas: Yes.

Mr. Rose: In this particular count, as I diag-

nose it, the government has sought to advert to the first count by reference excepting the last two paragraphs, and then proceeds to charge as affirmative matter, apparently as an overt act, for the reason that they conclude with the language, "contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America." I take it that that inferentially intends to depart from the former classification of alleged offenses and, possibly—well, your Honor has already interpreted that as being the so-called mail fraud charge. In this connection, then, we have the paradoxical situation——

The Court: That is what you call it too, isn't it, counsel for the government?

Mr. Rose: It is ostensibly——

The Court: Twelve and following are mail fraud counts?

Mr. Lucas: Twelve to sixteen are the mail fraud counts; seventeen is the conspiracy.

Mr. Rose: Your Honor will observe, paradoxically here, they have adopted as a preamble the allegation except the last two paragraphs of the first count, which is specifically defined and classified throughout here and by election of the government as the violation, repeatedly, of the Securities Act, that is, namely, Section 17 (a), Subdivision (1) and its corollary Act as set forth in the U. S. Code. Now, I don't think they could do it to start with. In the first place, they are attributing, they are trying to tie this isolated item—has your Honor the indictment before him? You will probably recall



this in a moment. Your Honor will remember this letter that was addressed to Dr. Hazelton, as was disclosed here from the witness stand by Carmen, and there is some writing "A. L. Roberts, room 721 Longacre Building, New York [1351] City" on the envelope. Your Honor will remember that Warren testified that that was the office of the head of the G.E., Great Eastern Gas setup at that time in 1940. So you have here an irreconcilable and paradoxical situation where they are attempting to claim and assert this conspiracy that occurred, allegedly, in 1935, between Warren or Carter and these other defendants, that this was an outcropping of that so-called conspiracy. That is an absurdity on its face.

I submit, your Honor, that this particular isolated item was undoubtedly a low-down piece of skulduggery on the part of Warren, and undoubtedly is, as your Honor indicated in your general analysis of the character of offense known as use of mails to defraud, in fact, a crime of that character.

In other words, this was a brilliant idea of Carter's, as he confesses here, to bilk Hazelton not by reason of any of the routine of selling him any stock, but he goes into Hazelton there and falsely tells him he needs some money to make a trip out to the coast, then he is going to Trinidad, British West Indies. Now, that is a pure swindle. And then he writes him this letter from Los Angeles. Your Honor can see this was a new piece of mischief and a definitely criminal activity originating, manifest-

ly, in the mind of Carter or Warren. This piece of swindle couldn't possibly be characterized as a [1352] legitimate act exaggerated or otherwise, growing out of the so-called scheme to sell this stock. This was a plain isolated and separate swindle originating in the mind of Warren in 1940.

In what manner are these other defendants reputed to be *particeps criminis* to this brainstorm and original idea of Carter or Warren? And what relationship has it to the so-called setup that occurred, as counsel has advised you, in 1935 that this conspiracy and combine was entered into? This is a separate and isolated transaction which, according to the confessions of Warren or Carter, undoubtedly subjects him to penalty for having used the mails to defraud. It wasn't a conspiracy; it was definitely an act on his part which clearly comes within the purview of those cases. Now, I want to show you how these—counsel and the geniuses have contrived to place the burden of this particular crime of the Trinidad Company, on the Wake Company and on Danziger. Where is there a scintilla of evidence in this case that shows that these companies and Danziger were privy and participated and agreed to function in this isolated and late piece of swindling on the part of Warren?

The only thing in the record is what? He, Warren, and that is all we have for it, says that he wrote a letter after he had been down to Hazelton and come back and told him this humbug story about he was going to [1353] British West Indies, and he was setting up this little syndicate that he was

going to let him in, and he needs money for the trip. Now, after he had presented this humbug, and in his own mind—mind you, all of the whole crime, your Honor, had been thought up, conceived, carried out in all of its details, and was complete before Warren or Carter caused this particular document to be placed in the mail. You have all of the elements complete beyond a shadow of a doubt and to a point of demonstration. Now, how are they trying to tie Trinidad, Wake, and Danziger into it? Merely by this piece of ephemeral nonsense: Warren says that he wrote a letter out to Danziger telling him that he expected a piece of mail, that he was going under the name of Roberts, and he asked that this be mailed.

Now, I don't know, your Honor, just how far one can go in trying to saddle the crime on somebody else. My point is there isn't a word of evidence that this swindle or proposed swindle—it was complete, your Honor, the money follows out before anything else. You remember that letter he sent to him in which he tells him, "I forgot to give you my address," he had a big blank space in it, then he tells him what the address is in New York. As I say, your Honor, this is going pretty far, when they try to charge as serious a crime as this to these defendants. And, mind you, they attempt to tie this into the conspiracy in 1935. [1354]

Now, in heaven's name on what hypothesis or on what rational basis can opposing counsel with a clear countenance and in good conscience submit to your Honor that this piece of treachery on the

part of Warren or Carter could have possibly been in the mind of anybody at the time of these transactions in New York respecting the proposed sale of the privately owned stock of Wake Development Company?

I say to your Honor this is going pretty far. As I say, the only thing in this evidence is Warren, the perpetrator of the crime, the man who had already committed the crime, he says that he wrote a letter, the contents of that letter is not before us, in which he said he was using the name of Roberts in a transaction with Hazelton. He doesn't even, willing as he is, assay to state to your Honor under oath or otherwise, "I sent a copy of this communication" or "I made the details of this swindle that I perpetrated on Hazelton by the time I sent this letter on to Los Angeles to be mailed." He merely says that he advised in the mail, without producing any copy or anything, that he was going under the name of Roberts in a transaction with Hazelton.

I don't know, your Honor, perhaps it is possible for reasonable men to conceive that a member of the bar for over 40 years standing here in Los Angeles, and a man who has been associated with big enterprises, would lend himself to this form of trickery and treachery. It is [1355] inconceivable and there isn't a scintilla of evidence.

If Warren's statement is to be believed, how far does it go from an evidentiary standpoint? It goes so far as saying, "I advised Danziger that I was carrying out a transaction with Hazelton in Jersey



under the name of Roberts," and that is as far as it goes. And with this evidence in the record—here is a thing that occurred to me, your Honor, and it is amazing. This scoundrel here was a fugitive at that time. Mind you, he wasn't produced before the Grand Jury. Who knew the mechanics of this transaction prior to the time that Warren or Carter appeared on this witness stand and told us what he did? Who knew that Warren or Carter, in fact, hadn't been in Los Angeles and mailed this letter, in fact, before he took the stand? What my mind is thinking about is something that your Honor seemed to give some consideration to, and that is what does it take to bring about an indictment of an individual? Can they, having elected to indict a man or some companies, can they charge him with all and inconceivable crimes on sheer speculation? This, your Honor, isn't even hearsay. Hazelton certainly didn't know that Roberts or Warren or Carter hadn't gone out to California. They didn't know—Warren hadn't given them a confession in 1940, that is obvious. So they just assume, they go to Hazelton, and there isn't any evidence—yes, there is, Hazelton was here and told us that he [1356] received this letter; now, that is all that Hazelton knew. And, mind you, at this stage of the game, namely, in March of 1940, how did the government know that this entrepreneur here hadn't even gone to the British West Indies? How did they know that he hadn't? That is merely assumption. We know now, yes, we heard the story, we know what happened, we know he didn't; but

did they know that he didn't? But, yet, they come out here and they indict a man on this thing here without knowing any facts at all, not even having hearsay; sheer surmise and conjecture.

Now, I say to your Honor, that if I thought that Danziger was idiotic enough with what he has at stake in this community and with his experience to be a party to this type of swindle, I say to your Honor in all candor, I wouldn't be in this court representing him. I would think that he deserves to be removed from society, if he would lend himself to this form of transaction.

This was, your Honor, sheer swindle of a man coming in and saying, "I am making a trip out here. I am going to the British West Indies, I need the money, now how much have you got?" "I have got this." "Let me have your stock."

By the way, he got his stock in connection with this transaction, too, you remember, 100 shares of that television company.

Who got it? Warren got it. He says he has got it [1357] somewheres even now.

Now, I say, your Honor, that I am very curious to see how far a prosecutor will go in claiming that there is evidence in this record to connect, mind you, not only Danziger, they even want to connect Wake Development Company with this humbug, and this bit of treachery, and they even throw in Trinidad International Petroleum Company, and several others that are named in this indictment. I say, your Honor, there is absolutely no basis or foundation from an evidentiary standpoint to sup-

port this particular count on any hypothesis, even on wild suspicion; there is nothing to show that any of the defendants whom I am representing in this proceeding here ever saw this communication, this thing here, were ever in possession or custody of it, that they ever received it; and, moreover, that they knew nothing about this transaction, and they didn't as charged in this count place it in the mail.

The Court: State your formal motion, Mr. Rose, as to the count.

Mr. Rose: At this time, your Honor, on behalf of the defendant J. M. Danziger, individually, I move that count number twelve be quashed, annulled, and dismissed upon the ground that there is no evidence of a competent nature whatsoever in the record of these proceedings to maintain the charge contained in said count twelve as applicable to said defendant, and for the reasons outlined in connection with a discussion of the evidence of this point I move that said motion be granted as to the defendant J. M. Danziger.

The Court: Decision will be reserved.

Mr. Rose: In respect to the defendant Trinidad International Petroleum Company, I move that the said count twelve be annulled, quashed and vacated and dismissed for the same reasons and upon the ground stated, which I adopt by reference, in connection with the motion submitted in behalf of the defendant J. M. Danziger, individually.

The Court: Decision will be reserved.

Mr. Rose: At this time, your Honor, I move that count twelve be quashed, annulled and dis-

missed as to the defendant Wake Development Company on the ground that there is no evidence whatsoever in the record to connect said defendants with the alleged commission of this offense charged in said count, and adopt by reference all of the matters and things submitted in support of the motion as to this count addressed to the court in behalf of the defendant J. M. Danziger, individually.

The Court: Decision will be reserved.

Now, go to count thirteen, Mr. Rose.

After I have his motions before me in all the mail fraud counts, then I will ask you to speak on all of them, Mr. Lucas.

Mr. Rose: As to count thirteen here you have the [1359] paradoxical tie-in—this assertedly is a mail fraud count as distinguished from the others, they tie in the allegations save the two last paragraphs of the S.E.C. count in count one; they charge as a substantive act and as a mail fraud that the defendants on March 7, 1940, placed in the mail to be delivered to Philadelphia National Bank a check made payable to A. L. Roberts for \$300.00 contrary to the form of the statute in such case made and provided. Now, attached and made a part of said allegations is a check, a cashier's check, drawn on the Farmers National Bank of Mullica Hill, New Jersey, and said check—

The Court: Who bought that check?

Mr. Lucas: Hazelton.

Mr. Rose: That is the \$300.00 Hazelton was



sending out to this man who was ready to fly to Trinidad, British West Indies.

The Court: All right.

Mr. Rose: Your Honor will remember as he looks at this particular check the evidence so far in this record fails to identify the endorser of that check. Carter or Warren professes that it is not his signature, that he didn't write it. That is the state of the record.

The opinion of the handwriting expert, on motion, was stricken by your Honor.

So, from a standpoint of evidence in connection with [1360] this particular check, we have what? We have the evidence that Hazelton in New Jersey bought this check, and apparently transmitted it out here. Now, then, after that we find by the endorsement following—that is, the rubber stamp following the unidentified signatory “A. L. Roberts” we find merely the Wake Development Company bank endorsement, which would indicate this check was deposited according to the cancellation stamps here in the Bank of America.

I don't understand, frankly, what the theory is in respect to this count. There isn't a single word of evidence on the part of anyone that this check was as charged in the indictment in said count deposited in the mails by anyone. They claim that we deposited it in the mails. There's anybody's testimony in this record that any such thing ever took place, and I can't conceive what difference does it make the manner in which you cash a check. In other words, whatever offense was consummated

by the relieving of Hazelton of this \$300.00 occurred by procuring the cashier's check.

Now, it seems to me that it would have been possible for Carter or Warren or any person after this endorsement to go in and cash this check. Supposing they dropped it in the bank or came to me and said, "Have you got \$300.00?" and I said, "Yes, I have got it. Here is a cashier's check"; I cash it and give them the \$300.00? How does the alleged placing in the mail of this thing, maybe by the bank—[1361] you may infer that it got back to Jersey in interstate commerce, I am not going to resort to fanciful and ridiculous absurdities, we know that this check got back, that it found its way back in the bank here at Mullica Hill, New Jersey, by some form of transportation. It may have gone there by express, I don't know—I am not speaking of poney express, the banks I understand use the Railway Express for bulk clearances and things of that kind, and no doubt they send them to a clearing center in great bulk for convenience, or they save money, something or other. But where is there any evidence that the defendants in this case in Los Angeles placed this check in the mails? And what difference does it make if they had placed the check in the mails? Does it become a crime when a man in lieu of presenting a check and cashing it—supposing, as I say, and who knows what happened here, except by surmise, suppose somebody in behalf of the Wake Development Company had gone down to the Bank of America here and said, "Here, give us \$300.00," and they would have paid

over \$300.00. Wake Development Company would have had its money, and what would they have had to do with the mailing of this check, and how is this mailing of this check the use of the mails to defraud?

They have charged the substantive offense and a definite affirmative act or course of action. They say, and that's what they charge in this count, that the [1362] defendants Trinidad International, Carter, everybody in this indictment—they don't say, "or either or any of them," no, they all did this, they placed it in the mail of the United States to be delivered to the Philadelphia National Bank of Pennsylvania.

Now, what is this? I just looked at a note here and I was wondering if I am seeing things. This check isn't even to the bank that they are talking about. This is the Farmers National Bank of Mullica Hill, New Jersey. They charge it was placed in the mails here by the defendant in a pre-paid envelope addressed to the Philadelphia National Bank, Philadelphia, Pennsylvania.

I submit, your Honor, in addition to these observations, that there is not one syllable of testimony in this case that this check came into the hands of the defendant J. M. Danziger, that he had anything to do with its mailing, and for the reasons set forth in an analysis of this count and upon the ground that there is no evidence to connect the defendant J. M. Danziger with this act charged, and on the further ground that the placing of the check in the mails, cashier's check, would not and cannot con-

stitute a public offense, and that by reason of the fact that this transaction under the record testimony shows it is a result of a series of independent and separate conduct committed on the part of Warren or Carter as he confesses here under the alias "Roberts" a new scheme on his part to [1363] procure money for an alleged trip to British West Indies, and so forth, that this cannot per se, and does not and cannot as a matter of law be relegated to the alleged conspiracy which opposing counsel has stated to your Honor occurred prior to the departure of Mr. Danziger to Europe in 1935; and for all of the reasons set forth I move that this count number thirteen be annulled, quashed, and dismissed as to the defendant Danziger.

The Court: Decision will be reserved.

Mr. Rose: I now submit in behalf of the defendant Trinidad International Petroleum Corporation, a co-defendant, a motion to quash, annul and dismiss said count thirteen upon the grounds that there is no evidence to connect said defendant with the commission of the acts and things therein charged. And in that connection I resubmit to your Honor as if restated to you in haec verba, the identical reasons and matters submitted in support of a dismissal of this count as to the defendant J. M. Danziger, and adopt same by reference in behalf of the defendant Trinidad International Petroleum Company.

The Court: Decision is reserved.

Mr. Rose: I now submit a motion to your Honor in respect to count thirteen to quash, annul and dis-



miss said count on behalf of the defendant Wake Development Company, upon the ground that there is no evidence to connect said defendant with the acts therein charged, save and other than [1364] its rubber stamp endorsement, and I adopt on behalf of said corporate defendant's motion to dismiss said count each and all of the matters and reasons and things presented to your Honor on behalf of the defendant J. M. Danziger's motion to dismiss said count by reference.

The Court: Decision is reserved. Now, count fourteen.

Mr. Rose: Let me see what fourteen is. In this count it appears there is a reallegation by reference of the first count, save and except the last two paragraphs, than it is alleged as affirmative acts that the defendants on May 8, 1939, in this district, the Southern District of California, for the purposes of executing a scheme—now, your Honor, they charge here that this particular act, they have departed from their language here, here they charge that this particular act was for the purpose of executing the scheme, antecedently the scheme outlined in the first count, that they placed in the mail in this district a check addressed to the Bank of Manhattan Company in New York. Now, this check bears date May 3, 1939, and is the check of Florence S. Lawyer. Here again, the check is the check of the First National Bank at Yonkers, New York, and not the Bank of the Manhattan Company in New York, and I submit that said allegations are paradoxical, antithetical, and inimical to the

provisos of law in that they are tantamount to double talk, and, necessarily, this particular transaction cannot possibly relate as an act to carry out the scheme [1365] to violate the Securities Act section which is in the haphazard manner pointed out pleaded inferentially as a part of the allegations in this count. There is no evidence whatever to show that the defendant J. M. Danziger had anything whatsoever to do with the transmittal of this check as they allege in here to the Bank of Manhattan Company New York, New York. Hence, for the reasons that the allegations in said count are unintelligible, paradoxical, and on the further grounds that there is no evidence to connect the defendant J. M. Danziger with the commission of the acts therein charged, and same do not constitute a public offense in that it is not such an act as is contemplated within the purview of mail fraud, and for the reason of insufficiency of evidence, and for the grounds and matters submitted in connection with the analysis of this count, I move that said count be quashed, annulled, and dismissed as to the defendant J. M. Danziger, individually.

The Court: Decision is reserved.

Mr. Rose: Now, in behalf of the defendant Trinidad International Petroleum Corporation I move the quashal, dismissal and annulling of count fourteen on the grounds submitted in support of the motion on behalf of the defendant J. M. Danziger, individually, and I adopt said reasons, analysis and the grounds and incorporate them as a part

of my motion that I now present in behalf of said corporate defendant. [1366]

The Court: Decision is reserved.

Mr. Rose: I now move, your Honor, that said count insofar as it is sought to apply same as an offense committed on the part of Wake Development Company be quashed, annulled, and dismissed for the reasons and upon the grounds presented in support of the defendant J. M. Danziger's motion, and I adopt said reasons and grounds by reference as if restated, and move that said motion be granted.

The Court: Decision is reserved. Now, count fifteen.

Mr. Rose: Here we have the same situation, your Honor, as presented in the preceding count—we are up to count fifteen, aren't we?

The Court: Yes.

Mr. Rose: This count, as your Honor will observe here, incorporates by reference the so-called conspiracy set forth in the first count, save the last two paragraphs. It specifically adverts to said particular conspiracy in that it says that having devised that scheme in the first count, for the purpose of executing that scheme the defendants unlawfully and feloniously placed and caused to be placed in the mails in this district in the post office a check to the Philadelphia National Bank at Philadelphia, Pennsylvania.

Here, again, the check is the Miners National Bank at Pottsville, Pa. This is a check by Elizabeth T. Parsons. [1367]

I submit there is no evidence in this record what-

soever to show that the defendants placed this check in the mail to be delivered to the Philadelphia National Bank at Philadelphia, Pennsylvania. The conclusions drawn are mere conjecture, surmise and speculation. There is no competent evidence that such act was, in fact, performed in any manner or degree by the defendant J. M. Danziger, and that the said alleged act would not and does not constitute a violation of the so-called mail fraud, and that the pleading of this count is antithetical and paradoxical to the type of alleged conspiracy as set forth in count one, and said count does not state a cause of action, and for all of the reasons asserted and presented in connection with this count I ask the court that said count be annulled, quashed, and dismissed, as applicable to the defendant J. M. Danziger as an individual.

The Court: Decision is reserved.

Mr. Rose: I now submit in respect to the said count, your Honor, a motion in behalf of the defendant Trinidad International Petroleum Corporation, and I adopt by reference the reasons and things as applicable to said corporate defendant in an analysis of the grounds stated in support of the motion as to said count in behalf of the defendant J. M. Danziger individually.

The Court: Decision is reserved.

Mr. Rose: I now submit to your Honor a motion as to said count in behalf of the defendant Wake Development [1368] Company or Corporation and adopt by reference as if restated all of the grounds and reasons presented in connection with said mo-



tion addressed to this in behalf of defendant J. M. Danziger's motion, as if the same were reiterated and restated.

The Court: Decision is reserved. Count sixteen.

Mr. Rose: Now, count sixteen adverts to the first count in the same manner, but in lieu of a check transaction the acts which are asserted in this count as constituting alleged violation of the mail fraud statute sets out a letter under date of January 26, 1939, addressed to E. Barrie Smith, Hartford, Connecticut. This letter said:

"We acknowledge receipt of your registered air mail letter with enclosures of endorsed Certificate 0779 for three hundred shares of Golden Quebec Mines, Limited, and your check in the amount of \$195.00.

"Confirming the terms of our letter of January 19th, we will have transferred to your name 55-5/7ths shares of Trinidad International preferential profit-sharing notes of like concern, and same will be forwarded to you shortly."

Signed by the secretary "A. Faulkner."

I submit that said count fails to charge a public offense, that the acts and things alleged therein are paradoxical and contrary to any evidence in this record. The transmittal of said letter of itself cannot possibly in the face of the record evidence be an act relating to the alleged scheme established by the evidence here formulated in the year 1935, namely, the first count of conspiracy. That there is no evidence to show that this letter had anything to do with the so-called scheme in the first count.

Furthermore, it affirmatively appears by the document which was asserted to be transmitted through the mails that it was not the act of J. M. Danziger as an individual nor is there any evidence that he was privy to, participated or had anything to do with this transmittal of the letter.

Frankly, in passing, I am in a quandry to know why the venerable draftsman of this indictment didn't pick out every one of these letters, they have introduced hundreds of them, and added a few more hundred counts. I think they were rather gracious just picking this particular letter out.

For the reasons stated there is no evidence to connect the defendant Danziger with the commission of the offense charged or sought to be charged in said count sixteen, and in support of that the matter is submitted in respect to a discussion and consideration of said charge and count, I move the court that said count sixteen be [1370] dismissed, annulled and quashed as to the defendant J. M. Danziger.

The Court: Decision will be reserved.

Mr. Rose: I now submit to your Honor in behalf of the defendant Trinidad International Petroleum Corporation a motion that this count number sixteen be quashed, dismissed and annulled on the ground that there is absolutely no evidence to connect said defendant with the commission of said alleged offense, and that the same does not contemplate by the acts therein charged the crime sought to be charged as against said defendant, that the allegations are paradoxical, inconsistent, and

the offense is so intermingled that it is more than difficult to even grasp the theory on which the prosecution asserts the charge of the commission of an offense in that count as to any defendant.

The Court: Decision will be reserved.

Mr. Rose: I submit a motion on behalf of the defendant Wake Development Company to quash, annul and dismiss that count for the reasons and upon all the grounds submitted to your Honor, which I adopt by reference, in the motions addressed to this court for the dismissal of said count on behalf of the defendant J. M. Danziger and on behalf of the defendant Trinidad International Petroleum Corporation.

The Court: Decision will be reserved. [1371]

Mr. Lucas, I will hear you briefly on the mail fraud counts.

Mr. Lucas: I will be very happy to make it brief, your Honor.

I think a mere reading of count twelve, the letter therein contained, suffices to show that it was mailed as testified by witnesses. In other words, the record shows that this particular letter was sent by Carter to Wake for remailing back to Hazelton. The letter, which is in evidence, Government's Exhibit 34, bears a Los Angeles postmark in two places. The court will remember that the testimony shows both by Hazelton and by Carter——

The Court: Go to the next count.

Mr. Lucas: As to the other, I only want to correct counsel in one thing; the transcript of the evidence shows that the expert testified as follows:

“There is somewhat more variation exemplified in this endorsement, but in my judgment it is not without the range of Danziger’s handwriting.”

The Court: What count are you talking about?

Mr. Lucas: That is thirteen, the check.

The Court: That is the cashier’s check?

Mr. Lucas: Yes. After Mr. Rose made some argument the court said, “The answer may stand”; so there is evidence of the endorsement, although we do not rely on the [1372] endorsement at all, that is, the handwriting endorsement “A. L. Roberts,” because the Wake Development Company stamp is on it.

And I want to say in each and every one of these instances where there is a check involved, the collection record itself shows that it was sent by air mail at the request of the Wake Development Company.

The Court: What record?

Mr. Lucas: The bank records, the collection records introduced by the bank.

The Court: Oh, yes.

Mr. Rose: I think you are in error about that, counsel.

Mr. Lucas: The same thing holds true about count fourteen.

The Court: We will take the morning recess, and I will hear your motion on the last count when I come back, Mr. Rose.

Mr. Rose: Very well, your Honor.

(A short recess was taken.) [1373]

The Court: Count 17.



Mr. Rose: Your Honor, here in Count 17 of the indictment there is a new form of conspiracy charged to have been formulated within the jurisdiction of this Court. It charges the defendants combined, confederated, and agreed to commit divers offenses against the United States.

Your Honor will remember at the incipient stages of this proceeding I commented on the fact that Section 88, that is, 18, USC., Section 88, which is the form of offense asserted to have been committed in this count, is predicated on the theory that it was an offense against the United States. Then, in attempting to describe the offense, the antecedent of that being against the United States, the divers offenses charged against these said defendants in the divers preceding counts of this indictment. Then they begin to specify 17(a)(1) and 5(a)(2). They do that in the conjunctive.

Now, as we remember 17(a)(1) being given some consideration by your Honor yesterday, it is a substantive offense, which I maintain under the scant decisions that are extant and touching upon that particular offense is the use of the mails in the selling of securities, and is, as your Honor indicated it is, a different form of offense than the so-called use of the mails to defraud. It relegates itself to securities.

The conjunctive "and" 5(a)(2), as we remember, is a section which pertains to registration of securities. [1374]

I am not going to take your Honor's time up on that point because we gave that considerable atten-

tion yesterday. It is our contention that the securities herein involved were not subject to registration by reason of Section 3, and under any definement of the so-called exemptions as set forth in Section 4 of the Securities Act.

And they tie in 215 of the Criminal Code, which, as I pointed out, is a very short statute which defines a crime to defraud the United States.

The Court: What is that all about, Mr. Lucas, from the government's point of view?

Mr. Lucas: This conspiracy?

The Court: No. This reference to the—is that 18, 88?

Mr. Rose: Your Honor, it is Title 18, Section 88. It is a very short paragraph as I remember it.

Mr. Lucas: I had hoped that before the conclusion of this case Mr. Rose would read Section 88. He tried to tell this Court that it was limited to perpetration of a fraud upon the United States. A mere reading of the section, your Honor, will show that a conspiracy to commit any other offense——

The Court: I have been troubled all the time; I thought it was that statute of fraud against the United States. Go ahead, Mr. Rose.

Mr. Rose: Are we talking about 18, USC Section 338, [1375] or are we talking about Title 18, Section 88? It is charged here 18, USC Section 338 in the body. Isn't that the section that pertains, your Honor, to a crime against the United States?

The Court: I don't know. I can't even remember telephone numbers. What is 338, does anybody know?

Mr. Lucas: Mail fraud.

Mr. Rose: I have a memoranda here somewhere on that section, and I will get to it, I guess, in time.

Now, then, the overt acts are the receipt by Wake Development Company on July 1, 1940, of the check for \$940.00; on July 2, the withdrawing from the bank account of Wake a check to cash for \$625.00; on July 2, 1940, the transmittal by United States money order to George Carlton; September 21, the Wake Development Company received from Miss Skinner the sum of \$300.00; and on September 22, 1939, the defendant Danziger withdrew the sum of \$230.00 from the Wake Development Company; and on September 22 at Los Angeles the defendant Danziger using the name of "Levy" purchased a Western Union money order of \$180.00 and transmitted to George Carlton; and on December 7, 1938,—this particular overt act is one which would, necessarily, even if it were significant, be barred by the statute of limitations—using the name of "T. Mack" bought a Western Union money order for \$102.56 payable to George Carleton; and on December 26, 1940, here in Los Angeles the defendant Danziger bought six postal [1376] money orders in the amount of \$530.00 payable to George Carleton; on August 12 at Los Angeles Danziger under the name of "Levy" purchased a postal telegraph money order for \$646.58 payable to George Carlton.

Now, from a consideration of these antithetical and paradoxical and conjunctive and disjunctive allegations I would like to know—I certainly can't find out from anything set forth in this count—

when this purported conspiracy is asserted to have been formulated. The acts, as I pointed out, which are made the basis of constituting this thing here are all acts, except the one of December 7, 1938, acts occurring in '39 and '40. The seventh overt act is December 7, 1938, which is \$102.56 Western Union purchase of a money order.

I submit your Honor, that this particular count apparently is an attempt to put a cow catcher under the series of preceding and antecedent acts just as we have in front of a train. Having charged the conspiracy under the so-called Securities Act as formulated in '39, and having attempted to create an offense by the fact that a bank received a check, sent it through the mails, he claims that these things constitute an offense; having claimed that a letter says, "I acknowledge your letter" that that was an offense; and having set up this clever piece of chicanery pulled on Mr. Hazelton in 1940 in March by Mr. Warren here—they now reassert that the conspiracy was to commit all of the acts [1377] pleaded before, and that the overt acts—they are very gracious, because as I understand the law each overt act once a conspiracy is shown in fact to have been formulated, the conspiracy itself becomes an offense and each overt act is a separate offense, so they are very gracious, your Honor, to have set out nine overt acts here—did I cover them all? Yes—and only seek to charge one offense. I am not going to take your Honor's time in any further argument and discussion of this particular count; I am going to submit a motion.



I move on behalf of the defendant J. M. Danziger in respect to Count 17 of this indictment to quash, dismiss, and annul the same on the following grounds, severally: One, that said Count 17 does not by appropriate allegations charge the commission of a public offense, that the allegations therein as a matter of law are insufficient, that the—if your Honor wants me to point out the insufficiency, I will be glad to do it, although I feel that there is no point in my assuming that your Honor requires any elucidation.

What is the last point?

(The record was read.)

Mr. Rose: (Continuing) That they are paradoxical, that they are unintelligible, that they are inimical to the respective statutes referred to and mentioned as part of the allegations of said count; that there is not sufficient [1378] evidence before the Court at the conclusion of the government's case to establish that the form, character, and nature of conspiracy purported to have been outlined and set forth in the said Count 17 was, in fact, formulated as therein charged or elsewhere or otherwise; that the purported overt acts which are pleaded as to all save overt act No. 7 do not constitute such an act as is contemplated as being the perpetration of any offense cognizant under the laws of the United States, and as to said Act No. 7 that the same, in addition to the fact that such act does not constitute an overt act in the form contemplated by the laws of the United States as a public offense, is an act committed prior to the

statutory provisos—that is, the statute of limitations, prior to the filing of this indictment.

For the reasons herein presented and each and all of them, singularly and severally, I move that said Count 17 be quashed, annuled and dismissed as to the defendant J. M. Danziger, individually.

The Court: Decision is reserved.

Mr. Rose: Incidentally, your Honor, there are no defendants outlined in the allegation of Count 17, they don't even say "The defendants named in the first count", or in any part of the antecedent part of the indictment; that is left to surmise. I assume the defendants at the time to the Grand Jurors unknown.

I submit to your Honor a motion to quash, now, and [1379] dismiss said Count 17 as is sought to charge the Trinidad International Petroleum Corporation with being a party to the purported conspiracy therein alleged, and adopt by reference with the same force and effect as if I were to restate them all of the matters and the things, grounds and reasons presented in support of the defendant J. M. Danziger's motion as to said count.

The Court: Decision is reserved.

Mr. Rose: I move that your Honor enter an order of quashing or dismissal as against the defendant Wake Development Company of said Count 17, and I adopt by reference as if now reiterated and made a part of this motion in behalf of said corporate defendant each and all of the grounds, reasons, matters and things submitted presented in support of the defendant J. M. Danziger's motion in regard to the particular count, namely, 17.

The Court: Decision is reserved.

I am going to speak for a few minutes now, Mr. Rose; not too long, I hope. I have before me now for decision fifty-two motions by number. I treat for present purposes the motions beginning with No. 4 as motions for a finding and judgment of not guilty, this being a trial without a jury. It has been my practice, and I think the practice of other United States Judges, I think it is supported by common law practice, I have so understood it, to reserve decisions on motions for a directed verdict where there is a [1380] jury, and for a finding of not guilty where there is not a jury, made at this stage of the case, namely, at the conclusion of the government's evidence. I say it has been my practice, and I know others, to reserve decisions on such motions until the end of all of the testimony. You will notice we have gone along here and that I have reserved decisions on these motions without stating the time at which I intended to pass on them. I think in fairness to the defendants in this case that I should and it is my present intention to rule on most of these motions at this time, contrary to the usual practice that I have followed.

Motions 1, 2, and 3, which I have not classified as motions for a finding of not guilty, motions 1, 2, and 3 are denied with exceptions to all of the defendants as to all of the motions.

All of the other motions, other than the motions directed to the registration counts, which are 8, 9, 10, and 11, all of the other motions, I repeat, other

than the motions directed to the registration counts are denied, with exceptions to all of the defendants.

Decision is reserved until the end of the whole case on motions directed to the registration counts, because I have been unable to make up my mind right now as to what I should do about them, and it may be that I will want further argument as to that before the conclusion of the case.

Mr. Lucas: I want to say at this moment, your Honor, that I have in court [1381] Mr. Black from the Securities and Exchange Commission, who is the interpretive attorney for that Commission.

The Court: I told you at the opening I wanted to follow my own schedule this morning.

That completes the ruling on the motions that are before me, and the defendant will now proceed with the introduction of testimony.

Mr. Rose: As I understand it, save and except—that is, decision is reserved as to 8, 9, 10 and 11?

The Court: Right.

Mr. Rose: And as to the others there has been a ruling of denial with exceptions allowed?

The Court: With exceptions, yes.

Mr. Rose: Very well. Come forward, Mr. Danziger, and take the stand. [1382]

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### JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.



(Testimony of Jacob Morris Danziger.)

The Witness: Jacob Morris Danziger.

Mr. Rose: I think I will take the time to correlate these papers later.

The Court: Mr. Rose, I want to extend to you every courtesy that I can. I know it is a serious matter for you and a serious matter for your client. If you want to wait until this afternoon before starting, because of the turn the case has taken, it is all right.

Mr. Rose: No, your Honor; I think I can very well take up the time that is available until noon, and then I can assemble certain documents and consistently carry in mind what phases I have and have not covered. I feel I can cover some matters of this character and then take my own time during the noon recess to assemble the papers. [1383]

Direct Examination

By Mr. Rose:

Q. Mr. Danziger, you are a citizen of the United States? A. I am.

Q. And you reside in the City of Los Angeles?

A. Close to the city.

Q. Where do you reside?

A. I live at 1356 South Greenwood Avenue in Montebello.

Q. You are a member of the Bar of the State of California? A. I am.

Q. Incidentally, how long have you resided in this community?

A. I have been here 60 years.

Q. How long have you been a member of the Bar of the State of California?

(Testimony of Jacob Morris Danziger.)

A. Approximately 40 years.

Q. Other than the practice of law, Mr. Danziger, have you been connected with any business enterprises?

A. Well, I would say I have been in the oil business since I was 21 years of age actively until about ten years ago.

Q. Now, in what phases of the oil business have you been interested or participated?

A. Well, I think practically in every phase of it, Mr. Rose. Our companies—the companies that I was connected [1384] with were producers, refiners, and marketers of oil, which embraces all the features of the oil business. I was an active officer of all of those companies from the time I first came with them.

Q. Have your interest in any of the companies, over the course of years with which you were connected in this oil industry, ever had anything to do with the promotion and sale of its securities?

A. No.

The companies that I was connected with, they were not promotions and they never sold their securities.

Q. So, so far as your experience and association in the oil business, have you ever, other than your endeavor to secure financing for the Trinidad International Petroleum Company here, had anything to do with the sale or the promotion of the sale of the securities and stock of any character or nature?

(Testimony of Jacob Morris Danziger.)

The Court: Before answering that question, I want to say something. Through inadvertence on my part, and I am sure on the part of the government, there slipped my mind, and Mr. Lucas has failed to remind me, the number of that count which he stipulated might be dismissed.

Mr. Lucas: Number 7.

The Court: What I said a moment ago is amended, Mr. Rose.

Count No. 7 is dismissed on the stipulation of the government. [1385] The ruling otherwise stands.

Mr. Lucas: Thank you, your Honor.

Mr. Rose: Will you read the question, please?  
(Last question read.)

The Witness: Not to the public in any way. Our companies were founded on sales to a group of our own associates of the securities which were issued when we created the company. But they were not sales, as you call them, to the public in any fashion. [1386]

Q. Addressing ourselves to the subject of the Trinidad International Petroleum Company, the corporation named as a party defendant in this indictment, when did you first come in contact with any phases of that corporate entity?

A. In the year 1934.

Q. At that time had the corporation been formed? A. No.

Q. It was formed in '34?

A. That is my recollection. It was either in '33 or '34. I think it was '34.

(Testimony of Jacob Morris Danziger.)

Q. It was formed prior to the enactment of the Securities Act, wasn't it?

A. Just about the time of the enactment, Mr. Rose.

Q. Well, that would leave it, then, in '33 as distinguished from '34.           A. Then it was '33.

Q. What steps, if any, did you take to ascertain what Trinidad Company possessed in the way of rights, in fact, or potential earnings, and so forth?

A. Well, I first made inquiry of a man named R. W. J. Sutherland in England, whom I had been informed had been the heaviest investor and the head of two former British oil companies that had had these same properties many years before, and on which they were reputedly stated to have done some development work. I wrote him inquiring concerning the [1387] properties and concerning certain recommendations that had been made to me by Mr. Thomas Hill who was one of the owners of the properties, who was in New York at that time, and who first talked to me about it.

Q. Without taking up too much time with detail, will you give us some of the high lights of what you ascertained?

A. Well, Mr. Sutherland said that he had organized two companies some years before that took over from Mr. Hill and his associate owners leases on these particular properties. He told me that he had a report made by a geologist named Falconer, F-a-l-c-o-n-e-r, whom he had employed at



(Testimony of Jacob Morris Danziger.)

some very large price to report to him on the properties. He subsequently sent me a copy of that report.

Q. Incidentally, let's pause here for a moment. I believe I can lay my hands on that. What did you say the name was?

A. Falconer. It will be some loose leaf documents, Mr. Rose; not that Huntley-Huntley report that you are looking at.

Q. Well, let's go on; I can't place my hands on it.

A. Mr. Sutherland also told me, this was by letter, that he had drilled two wells or caused to be drilled on the property two wells. He told me how deep they were. He said that one of them was—they both had oil, and one of them was still flowing oil; that it was in mechanical difficulties, there were a lot of tools in the hole and they weren't able [1388] to finish it. He told me other details of his difficulties in having the properties drilled due to his not understanding the oil business. He was a coal merchant.

Q. Just a minute.

Mr. Rose: At this point I have found a number of pages which, offhand, appear to be Falconer's.

Q. By Mr. Rose: I have exhibited to opposing counsel a memoranda that I find amongst some of the papers handed to me, and I will ask you if this is the Falconer——

A. Mr. Rose, could I ask you to get my glasses for me? Yes, this is the report that Mr. Suther-

(Testimony of Jacob Morris Danziger.)

land sent me. And it also contains a report of another gentleman named McCall, from whom he also said he had gotten some information concerning the properties before he drilled them.

Mr. Rose: I offer this as the defendants' exhibit in evidence next in order.

Mr. Lucas: To which we object, if the Court please, first, on the ground that there is no proper foundation for the introduction of the document, in that it is palpably a copy and not a signed original, and, therefore, no foundation is laid. Further, that it is hearsay and secondary evidence, and deprives us of the opportunity of cross examining the person who made the alleged report.

Mr. Rose: I would like to be heard on that.

The Court: It is not necessary. I am going to give the defendant a wide range, Mr. Lucas. I imagine there won't [1389] be many objections that you make or can make that will be sustained.

Mr. Lucas: I just did that to protect the record.

The Court: It is admitted.

The Clerk: Defendants' Exhibit S.

(The document referred to was marked as Defendants' Exhibit S, and was received in evidence.)

Q. By Mr. Rose: Mr. Danziger, I interrupted you, since I was able to find the item that has just been admitted. Will you carry on from there?

A. He told me, by letter, of a lot of difficulties he had had in getting the properties developed. I can remember one outstanding statement that he

(Testimony of Jacob Morris Danziger.)

made; that he had sent some very large amount of materials to the properties that never reached the properties. And he told me that there had been expended in acquisition and on the properties a sum in excess of a million and a half pounds.

Q. That is in English money? .

A. In English money. He spoke very highly of the properties. He confirmed what Mr. Hill had told me; that the properties belonged to Mr. Hill, Mr. Gaskin, and to Mr. Allahar. Those are the only outstanding things that I can remember that he told me. But if you wish, I think I have a lot of his letters that would give more detail.

Q. Well, I intend to read some of those that tie in with around the period we are concerned with, your meeting [1390] of Carmen or Carter. I don't want to go back too far except to hit the high lights. How about this report of the properties by Huntley & Huntley? Does that have anything to do with this thing here?

A. It has to do with these particular properties. After the company was organized and I was endeavoring to sell some of the shares which the Wake Development Company received from the owners of the property, I had been doing some legal work for a group that owned a couple of companies called South American Oil Fields and All Americas Company. In this work that I was doing I ran into the fact that a subsidiary of theirs, the Latin American Petroleum Company, had at one time apparently had something to do with these

(Testimony of Jacob Morris Danziger.)

very same properties, and I found in their file a report by a geologist Huntley & Huntley, who were well known in the profession, which is the report that you have there, which concerned these very same properties, in part.

Q. Did you give consideration to this report, insofar as it affects the properties in which the Trinidad Company has an interest, in formulating an opinion as to its potentialities?

A. Not before the Trinidad was organized. That report I took into account in fortifying my opinion and in concluding, further, that they had good properties. I didn't get that report, I didn't run into it until some time after the Trinidad Company was organized. [1391]

Q. I want to be sure. Is this the one you are talking about?

A. Yes. This report covers other properties of this same company, some in Venezuela; but the properties referred to in this report under the title of "Trinidad" are a part of the properties that the Trinidad International Petroleum Company have and then had.

Mr. Rose: I offer this next in order, your Honor.  
The Court: Admitted.

The Clerk: T.

(The document referred to was marked Defendants' Exhibit T, and was received in evidence.)

The Court: Did I state that the other one was admitted?



The Clerk: Yes.

The Court: We will recess.

(Whereupon, at 11:55 o'clock a. m., a recess was taken until 2:00 o'clock p. m.) [1392]

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Los Angeles, California,

Thursday, February 1, 1945. 2:00 p. m.

Mr. Rose: Your Honor, the witness has called it to my attention that he finds it a little difficult—he wants to face the Court, and if I stand here he has to turn his back to the Court, so if it is agreeable to the Court I will resume my stand at this point.

The Court: That is all right.

JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Rose: The last question and answer, please.

(Question and answer were read.)

By Mr. Rose:

Q. Incidentally, was there to your knowledge any relationship between the majority stockholders of the Trinidad International Petroleum Company and the fee owners of the property in this Trinidad deal?

(Testimony of Jacob Morris Danziger.)

A. Well, the owners of the property organized the company and turned in the properties for the stock of the company, 500,000 shares, and 165,000 of the 500,000 went to Wake by an arrangement, and the owners kept and still have the 335,000 shares in the company, and they own a great majority of the company today. [1393]

Q. Then, I take it that the shares of stock which ultimately found its way into the treasury of Wake Development Company and has been referred to in these proceedings as the personally owned stock of the Wake Development Company, was a transfer made of the holdings originally issued to those that put in the properties for the stock?

A. That is correct; and we called it vendor shares.

Q. And you have indicated here you have spent most of your adult life in the oil business, and all phases of it; will you indicate to his Honor here, if you had any such view, what formulated in your mind that the properties taken over by the Trinidad Company were of any value?

A. Well, for the following reasons. The reason I got enthused about the property was, first, there was oil coming out of a well that was only 1700 feet deep, of a light gravity. You very seldom, if ever, find light oil at a shallow depth in any drilling operation. You find light oil, but generally at a great depth. It is very seldom—I only know of two or three cases—that you find light oil at a shallow depth. I had an analysis of the oil

(Testimony of Jacob Morris Danziger.)

which Mr. Sutherland send to me, and it showed it to be a very light oil. Next, in Trinidad the largest oil company in Trinidad only had 500 acres of land. It isn't an area of great large acreages like in Venezuela and Mexico. Now, this company had 2100, 2075 acres of land. And, next, the properties were scattered. You very seldom find 2,000 acres [1394] of oil land in one body. You may have 2,000 acres of land that is in a body, and if you get two or three hundred acres of it oil land you are very lucky. The fact that the areas were scattered also made them attractive. Next, the oil was in a British colony. British colonies were favored in tariff regulations as between Great Britain, which is one of the great consumers of oil in the world, over non-colonies. Another thing that was very attractive was this: I looked into the basis of the tenure, we will say. Who owned the oil under the ground? In Trinidad the great bulk of the areas in the oil fields, the government owns the oil under the ground; the land owner doesn't own it, and you have to deal under a license from the government with all of the difficulties that you have in having a government organization as your landlord. These particular lands, they were among the very few areas in Trinidad where the land owner owned the oil under the ground.

I can go into the details of how that happens to be, but that is the fact.

Now, those facts, combined with the fact that Trinidad was somewhat in the limelight at that

(Testimony of Jacob Morris Danziger.)

time, it had been gradually increasing its production a few years before, I think Trinidad had produced two or three million barrels of oil in a year, I mean the island, not the company, and that year the production had gone up to ten million barrels. It was in the limelight as an oil producer. And those things [1395] combined gave me some real enthusiasm for the properties.

Q. I have exhibited to counsel for the government what appears to me to be a map. I will now show you the map and ask you if you can state to me in whose handwriting that is.

A. This map is in the handwriting of R. W. J. Sutherland. He is the man who had been reported to me and subsequently confirmed to me that had organized these two British companies that had drilled the wells on these properties, and at some time he sent me this map, which is only one of the two hundred different parcels of ground, and that is in his handwriting.

Q. Does that particular map indicate the existence of a well on this particular portion of the property?

A. This map covers one of the parcels that has the oil well drilled on it that we call in our correspondence as being on Mandingo and some road I forget the name of. But this map shows the well location of it, and it is so marked there.

Mr. Rose: I offer this map as defendants' exhibit in order, your Honor.

The Court: It is admitted.



(Testimony of Jacob Morris Danziger.)

The Clerk: U.

(The document referred to was marked as Defendants' Exhibit U, and was received in evidence.)

Q. By Mr. Rose: In testifying here a few moments ago, [1396] Mr. Danziger, you referred to reports—as I go along, I may jump from time to time to some exhibits that are marked for identification, as long as we are talking about the subjects. I have here in my hand Exhibit Q, for identification, which purports to be both photostatic and original publications of a publication called *The Petroleum Times*, one of which is dated in October 29, 1932, and then you have “*The Petroleum World, World News of the Empire*”, and you have an item from the *Oil Weekly* of April 23, 1934, referring to properties in New Mexico, and an item marked March 19, 1934, respecting New Mexico oil leases; and I will ask you whether these are photostats or originals of these publications they purport to be.

A. They are, Mr. Rose. I had these photostats made after examining the publications, I think, in the library in New York when I was going into the merits of Trinidad and these properties at or about the time that the proposition first came to me.

Q. Now, at any time did you exhibit these documents to the person who is known as Warren and who has been referred to by various names in this proceeding?

A. Well, I showed these to the Great Eastern

(Testimony of Jacob Morris Danziger.)

people, Mr. DeHart and Mr. Carmen who were talking to me at the time about a contract on some Trinidad stock that the Wake Company had, and I showed——

Q. We will go into that later. I just wanted to know, [1397] Mr. Danziger, whether these had been shown to DeHart and to Mr. Warren.

A. They were.

Mr. Rose: I now offer these items which constitute Exhibit Q, for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Defendants' Exhibit Q, and was received in evidence.)

Q. By Mr. Rose: I find here in evidence, Mr. Danziger, a series of documents that pertain to certain New Mexican properties, an operating agreement, and a proposed form of contract. There has been mention made of some New Mexican properties purportedly connected with this Trinidad enterprise. Will you briefly tell us how this New Mexican phase of the factors came into this Trinidad deal?

A. Well, it was part of the arrangement between Wake Company and the Trinidad properties that if we saw any oil opportunity in the United States that might appeal to them as an oil proposition, that I should put it up to them. And I had run into this New Mexican possibility in some fashion, I don't remember how, but I did present it to them. I think those papers there, which were filed

(Testimony of Jacob Morris Danziger.)

with the Securities and Exchange Commission, are the original documents under which I acquired some hold on that property.

Q. Were these rights such as are reflected in Exhibit F, and the collateral agreements in respect to this New Mexican [1398] phase of the properties, turned over to the Trinidad Company?

A. They were; and an application was made to the Securities and Exchange Commission to authorize the sale of some stock for the purpose of developing those particular properties. You had to recite in your application what you wanted to use the money for.

Q. And that is covered in Exhibit A, which is the registration?

A. Well, it is covered in the registration. I don't know whether that is Exhibit A or not.

Q. Did you personally receive anything, or the Wake Company, other than that original agreement between you and the organizers of Trinidad for this phase of the deal?

A. Oh, no. We turned that in just as it came to us. We made no profit on it or anything of that character. We just offered them the opportunity.

Q. Incidentally, I find in passing here a photostat of a geological report on the New Mexican features here. Briefly, who made that report, the geologists on the New Mexican phase of it?

A. That is made by the State Geologist of New Mexico, a man by the name of Wells, and he refers

(Testimony of Jacob Morris Danziger.)

in that to Chupadera Anticline. It is on the Chupadera Anticline that those properties are located.

Q. I now hand to you a photostat marked Oil and Gas Resources of New Mexico, and meridian area map, and I will [1399] ask you whether the material and map therein outlined pertain to the New Mexican properties in which the Trinidad Company was interested. A. It does.

Mr. Rose: I now offer in evidence in behalf of the defendants the exhibit just referred to.

The Court: Admitted.

The Clerk: V.

(The document referred to was marked as Defendant's Exhibit V, and was received in evidence.)

Q. By Mr. Rose: I want to clear this thing up in my own mind, at least. You say that the registration, which is exemplified by the photostatic document produced by the S. E. C., which is a so-called registration, was a proposed authorization to sell stock only in connection with the New Mexican phase of the transaction? [1400]

A. Yes, that is correct. When you register an issue you have to tell, as we did in that registration, what you want the money for. And we were seeking to raise the money to develop those New Mexican leases, and we so recited in the registration application.

Q. Well, was there any effort made to raise any money by a registration with the Securities



(Testimony of Jacob Morris Danziger.)

and Exchange Commission to finance the development of the Trinidad company?

A. No, there was not. That financing was being done over in England.

Q. When had negotiations to finance that phase of the properties commenced?

A. Mr. Hill, one of the owners of the Trinidad properties, went to England immediately after the Trinidad company was organized. He informed me and the other members of the company that he had arranged the finances for the development of the Trinidad properties in England, and he went over immediately after the company was organized for that purpose.

Q. Let me ask you this: Prior to the time you met DeHart or Warren—I prefer to refer to him consistently as Warren, and you will understand who I am speaking about whenever I refer to him as Warren. You have that in mind?

A. Yes, I have that in mind.

Q. Before you met that gentleman Warren, or DeHart, had any arrangement been made respecting your leaving for Europe? [1401]

A. Yes, Mr. Rose. I had had some telegraphic and letter correspondence with Mr. Sutherland concerning some finances for the company and the sale of oil and so forth, and had some form of a commitment from him, if I remember correctly, before I ever met Mr. Carmen or Mr. DeHart.

Q. I have here marked at present, for identification, Exhibit H, which purports to be a Postal

(Testimony of Jacob Morris Danziger.)

Telegraph original from London addressed to you, reading, "Very necessary cable me full authority deal Trinidad lands Sutherland," which is shown to have been either cabled or received on the 15th of February, 1935. Did you receive this in the course of your preliminary activities prior to going to England? A. I did receive that, yes.

Q. Did you exhibit that to Mr. Carmen, or, rather Warren?

A. I am very sure that I did. I told him everything that indicated that the company was on its way.

Mr. Rose: I now offer Exhibit H, for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Defendant's Exhibit H, and was received in evidence.)

Q. By Mr. Rose: What was done, if anything, by you in connection with the checking of the titles of the properties involved in this Trinidad transaction?

A. Well, after the company was organized, just exactly [1402] when I don't know, but I can find out from some records I have, I know that we received from Mr. Hill, one of the owners, a great mass of title papers. I remember them because they were so large. They were a stack about that high (indicating).

Q. Indicating about two and a half feet.

A. And I sent them to Los Angeles to my asso-

(Testimony of Jacob Morris Danziger.)

ciate, Mr. Andrews, who was an attorney, for him to check and report on those titles. And he did so.

Q. There has been some allusion made in the course of the testimony here, I think Mr. Mainland mentioned it, that certain original title papers and agreements relating and pertaining to this Trinidad deal were asserted to be in the possession of some solicitors in England. Do you have that in mind?

A. Yes, sir.

Q. Tell us something about it.

A. When I went to England I took with me the title papers and all the data that I had concerning the company's properties. Among them I took these particular titles. And when I completed the arrangement over there I lodged with the attorneys for the bankers or brokers, whatever you want to call them, that I made the arrangement with—their solicitors examined the titles and I lodged with them the title papers. The firm was Lindo and Company; the individual was a Mr. Brown. And—I think that answers your question. I needn't volunteer anything. [1403]

Mr. Rose: I am exhibiting to counsel a couple of documents.

Q. By Mr. Rose: Have those papers ever been returned to this country?

A. Yes, they were returned when the Securities and Exchange Commission made an investigation of the Trinidad company, they asked for those title papers and I sent them out. I think I was then in England. I sent them out here and they

(Testimony of Jacob Morris Danziger.)

were given to them. They finally got back, and I finally got them back in England and left them with the solicitors when I left there.

Q. I have exhibited to counsel a British post-card addressed to you, dated the 23rd of December, 1939, which purports on its fact to come through the mails to you, and I will ask you whether you received this document in the course of the mails?

A. I did.

Q. What does that document pertain to?

A. It is a letter from Mr. Sutherland to me in which he tells me that he had gotten from Mr. Brown of Lindo and Company the documents referred to in a letter that I sent him. We were in the war then, or Britain was, and I wanted to get these documents out of London and asked Mr. Sutherland if he would get them; and this is his advice that he had gotten them.

Q. Here is a blue document bearing the address [1404] 36 Oxford Road Birkdale, Lancs., "Receipt for box or sealed parcel"; what is this?

A. Then subsequently Mr. Sutherland sent me this receipt. He had lodged these records at the place indicated here and sent me this receipt as evidence of where they are, and I guess they are still there.

Mr. Rose: I offer these two documents that have been referred to and identified by the witness as one exhibit in relation to the subject of place and location, your Honor, of the particular documents.

The Court: They are admitted.



(Testimony of Jacob Morris Danziger.)

Mr. Rose: In passing, I notice that this Englishman here, back in 1939, is speaking of the end of Hitlerism.

The Clerk: W.

(The documents referred to were marked as Defendant's Exhibit W, and were received in evidence.)

Q. By Mr. Rose: Let's see if we can cover a little ground here. Let's get to Warren and DeHart. When, to your recollection, did you meet Mr. Warren?

A. I met them about a month or thereabouts before I went to Europe, and I went to Europe in September '35. Isn't that correct?

Q. Do you have your passport with you?

A. I gave it to you, Mr. Rose. I haven't got it with me.

Q. Well, as you know as a lawyer, I can't testify and [1405] I don't like to.

A. I can tell you an exact date if you let me see that passport.

Q. Let's clear it up with certainty. Mr. Danziger, I know I had it here yesterday, but I think I turned it back to you. Do you think it might be in your brief case?

A. It may be. September, 1935, is my best recollection of when I went. I say that I met Mr. DeHart and Mr. Carmen about a month or six weeks before that.

Q. Will you relate, if you will, how did Mr. Warren happen to meet you?

(Testimony of Jacob Morris Danziger.)

A. He came to me or first telephoned me and told me that a Mr. Howe, whom I knew in New York, had told him that I had a company that owned a lot of good looking properties, and he wanted to talk to me about them, and he came up to the hotel to see me. By him I mean Mr. Carmen. I told him the history of the Trinidad company and what I thought of the properties and of the financing that had been arranged over in England, and told him everything that I knew about the New Mexico properties that the company had. I told him about the registration with the Securities and Exchange Commission for the issue for that stock. In fact, I told him—as I remember, I told him everything that I knew at that time about the properties.

Q. Did you and he discuss the subject of selling any securities? [1406]

A. Mr. Carmen told me then——

Q. Incidentally, let's clear this up, then we won't come back to it. It occurs to me and I would like to develop it. Let us clear up this business. You keep talking about Carmen. Let's clear that up. What name did you meet him under?

A. It was either Carter or Carmen; I don't know which.

Q. Well, in connection with your early meeting with him did both of those names get into the picture in some way? And if it did, will you please briefly tell us about it?

A. Well, I met him either as Mr. Carmen or

(Testimony of Jacob Morris Danziger.)

Mr. Carter, and after we got started on some business he told me that he was going to do the business in the name of the opposite. If it was Carter when he was introduced to me, he told me he was going to do it as Carmen; if it was Carmen, he said he was going to do it as Carter. He told me he had some difficulties with his wife about financial matters and he didn't want any monies coming to him from anybody under the other name.

Q. Go ahead.

A. He told me that he had been connected in some financial way in the handling of the securities of a company called the Great Eastern Natural Gas Company. He told me somethig about it. I had never heard the name. He said they had spent a very large sum of money drilling some gas [1407] wells out in eastern New York. I remember the details very particularly, because I didn't know at that time there had ever been any gas out in Eastern New York, and I subsequently investigated and found there had been. And he said that he believed he could handle a large portion of the stock of the Trinidad company. I explained to him that the company, as a company, didn't wish to do any financing concerning the Trinidad properties; and the finances were being arranged and had been arranged in England; that I could let him have some small block of shares of the Wake Development Company. I explained to him how we got them; that I was going on over to England very shortly, and that I could use, very comfortably,

(Testimony of Jacob Morris Danziger.)

some money to get me over there. And he wanted to handle 100,000 shares, and I told him no, that we didn't want to sell any such quantity of stock, that we would sell but a few. Well we dickered back and forth; I didn't want to sell 20,000 shares, but he finally made an agreement with me, he and Mr. DeHart, who he had brought into the picture as the president of the company, and we entered into a written agreement, that I think is in evidence here between the Great Eastern Company, signed by Mr. DeHart, who carried on the negotiations with me. I think the second visit Mr. Carmen didn't even stay; he left Mr. DeHart with me, and I negotiated a loan with Mr. DeHart. Subsequently Mr. Carmen came into the picture——

Q. Wait a minute. I don't want to try to present the [1408] evidence here as just a continuous story. I would prefer to clear up certain factors that stand out in my mind at a time, if you don't mind. Let's relegate ourselves now to the business of this Great Eastern transaction. I want to know what was discussed and about that phase of the transaction. Let's stay with that until we clean that up, at least sufficiently so we will know definitely what your version of that transaction is.

A. Well, either Mr. DeHart or Mr. Carmen, or both, told me that if they could offer a right of some character to their old stockholders, that they believed by doing something for them for their old stock, that they could market some of the Trinidad stock that the Wake company had. I think



(Testimony of Jacob Morris Danziger.)

in my telling Mr. Carmen or Mr. DeHart or both of them about the situation over in England, I had explained to them that there had been a lot of money spent in acquiring and developing the same properties in England by two large British concerns, and that the owners who had taken the property away from the British concerns and had organized the Trinidad company had provided a theory or system by means of a preferential profit-sharing note that they were going to give those old stockholders for the interests that they had had in those properties; and either Mr. Carmen or Mr. DeHart, or both of them, suggested that they thought some form or right could be created for their stockholders, and suggested to me that inasmuch as we were apparently building [1409] an organization only to develop in Trinidad, that if we discovered oil or gas in New Mexico, that they had an organization that could market that oil and save us the difficulty of creating such an organization. And by discussion there was generally developed between us the ideas that were put into the written contract, which goes into the fullest detail as to what the Great Eastern Company were agreeing to do for the Trinidad company concerning the New Mexico properties.

Q. Without taking time myself to become familiar with the number of that document, I think we all have that in mind. At the time that agreement was drafted and signed by DeHart and yourself, did you contemplate using that agreement as

(Testimony of Jacob Morris Danziger.)

a subterfuge in any manner to promote the sale of any securities?

A. Not the slightest intention of doing so.

Q. There has been some mention made here, and it has been introduced—in fact, produced by Warren—an exhibit in the handwriting of yourself, in which you were drafting a proposed form of communication to go out to certain stockholders. Do you have that one in mind?

A. I have it in mind, and I drew that for them.

Q. You did? A. I did.

Q. In the activity relegated to that time when this proposed draft was being prepared, was there any discussion as to what persons or class of persons it was intended to [1410] receive that particular communication?

A. It was intended for the stockholders of the Great Eastern Natural Gas Company.

Q. Were any others contemplated, discussed in any respect at that time? A. No.

Q. Was there any discussion in connection with the sale to Great Eastern Gas Company stockholders of those securities, other than those owned by the Wake Development Company?

A. None whatever.

Q. Now, there have been introduced in evidence here a series of papers that were drawn up around that time.

Mr. Rose: Will your Honor bear with me? I didn't get a chance to go over these exhibits that are here. I would like to clear that up if I may.

(Testimony of Jacob Morris Danziger.)

Q. By Mr. Rose: Mr. Danziger, there is now in evidence Government's Exhibit No. 42, which is on the letterhead of the Trinidad International Petroleum, Ltd., and I will ask you whether prior to your departure from England that document, in the form in which it now appears, had been prepared?

A. Yes, it had. It bears my signature, Mr. Rose.

Q. Here is Exhibit No. 41, dated October 28, 1935, under the letterhead of the Great Eastern Natural Gas Company. Did you ever see that prior to your departure for England?

A. No, I never saw that for a long time afterward.

Q. After this agreement had been made with DeHart and [1411] the Great Eastern Company, what discussions were had, other than what you have already indicated, concerning their activity in respect to the sale of any securities?

A. Well, I think shortly after the contract was signed Mr. DeHart told me, in Mr. Carmen's presence, that he was turning the whole business over to Mr. Carmen for handling, and to deal with him from then on. And I did have some dealings with him before I left for Europe a month or six weeks afterwards.

Q. I have in mind there have been introduced here some material that you turned over to either DeHart or Mr. Warren.

A. You mean those rights, the printed rights of

(Testimony of Jacob Morris Danziger.)

the old South American deal? I don't know just what you refer to when you say "material."

Q. What discussions did you have with Mr. DeHart and/or with Mr. Warren respecting the subject of only Wake Development Company's personally owned stock was to be sold?

A. I made it very clear to them that in view of the fact that the Trinidad company had a registered issue with the Securities and Exchange Commission, that they must be very careful and not in any way indicate that—or fail to indicate that the stock that they were offering to their stockholders was privately owned stock of the Wake Development Company.

Q. What steps were taken in that connection?

A. Well, I wrote a memorandum, which I think was here, [1412] a two-page memorandum——

Q. That is the one I am looking for.

A.——that Mr. Carmen produced here the other day, that I have been trying to find for a long time, in which I very distinctly emphasized that there would be no checks taken in the Trinidad name, and they must particularly say that the stock they were selling was the privately owned stock of the Wake Development Company. Now, I have seen, since we have been in this court room, that document.

Q. That is the one I am looking for at the moment.

Mr. Rose: Does your Honor have the document in mind?



(Testimony of Jacob Morris Danziger.)

The Court: No.

The Witness: It was a two-page thing on Trinidad stationery.

Mr. Rose: I know. I would know it the minute I would see it.

Mr. Mainland: It is Exhibit 112, I think.

Q. By Mr. Rose: I show you Government's Exhibit No. 112, a group of papers, and here is a two-page document at the end marked Trinidad International Petroleum, Ltd., Information for Company Representatives; is this the document you referred to?

A. Yes, that is the one, Mr. Rose. That is the document I refer to.

Q. While we are on Exhibit 112, I find attached thereto what purports to be—it looks like a reproduction procured [1413] in some form of a communication coming out of the offices of the Securities and Exchange Commission, from Washington, bearing the date, September 3, 1934, and is merely addressed to "Gentlemen;" I will ask you to examine that and state whether you have ever seen that document?

A. Not in that form, Mr. Rose.

Q. What do you mean by "not in that form?"

A. Well, I have seen a typewritten communication that I got from the Securities and Exchange Commission recently similar to that, but not—but it has a salutation or an addressee on it.

Q. Who is the addressee to whom that is addressed?

(Testimony of Jacob Morris Danziger.)

A. It is either Wake Development Company or Trinidad International; I don't know which.

Q. Did you ever have anything to do with placing in the custody, possession or control of the witness Warren this particular part of Exhibit No. 112, or any facsimile thereof?

A. I never did; and I never saw that before.

Q. I exhibited to Mr. Warren, during the course of his cross-examination, an envelope. I will ask you if you have seen that or a similar envelope before?

A. I have seen both this and similar ones before.

Q. Did you ever cause to be delivered to Mr. Warren facsimiles of this form of envelope?

A. Shortly after the agreement was made with the Great [1414] Eastern Company I directed the Los Angeles office to have a number of those envelopes printed and sent on to the Great Eastern people. I don't know whether it was to go to Mr. Warren or to Mr. DeHart or to the company.

Mr. Rose: Let me have the answer, please.

(The answer was read.)

Q. By Mr. Rose: But you know that this form of envelope actually went into their possession?

A. I do.

Mr. Rose: I offer this as Defendant's next in order.

The Court: Admitted.

The Clerk: X.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendant's Exhibit X, and was received in evidence.)

Q. By Mr. Rose: What was the discussion, if any, precipitating the causing to be printed and placed in the possession of these Great Eastern people this form of envelope?

A. I provided them with the idea that they should make their remittances or their sales reports, or whatever they had to do in connection with this Great Eastern deal, direct to the Wake Development Company in their Los Angeles office.

Q. Mr. Warren testified here on his direct examination, and also on cross examination, about your having a conversation with him in substance or effect that salesmen, to your [1415] knowledge, used fictitious names and aliases. Was any such discussion ever had between you and Mr. Warren at any time?      A. No, sir.

Q. There has been some discussion about meeting a Mr. Kramer while you were in New York. Did such meeting take place?

A. Yes, Mr. Carmen brought to my hotel a Mr. Kramer.

Q. Through whom did you meet Mr. Kramer?

A. Through Mr. Carmen. He brought him there. That is the first time I had ever seen him.

Q. I don't profess to remember everything in this case, but if my memory serves me, Kramer was referred to as, in a discussion that you assertedly had with Warren, that his true name was—what was it, Johnson?

(Testimony of Jacob Morris Danziger.)

A. I never heard that at any time. In fact, when Mr. Carmen cabled me about it he referred to him as Mr. Kramer. I never knew him in any other way.

Q. He has testified here, on both direct and cross examination, there was some discussion in his presence and in the presence of Kramer and yourself, whereby the subject came up that they could sell the whole issue of Trinidad stock. Was there any such discussion had?

A. Yes, I heard such a statement made by——

Q. I don't mean whether you heard him make such a statement here; but I mean the discussion——

A. Yes, sir, I heard such a discussion at the time it [1416] was made.

Q. It was made where?

A. In my hotel room in New York at the time that Mr.——

Q. Let's lay a foundation and you tell us what was said and how that phase of matter came about to be discussed?

A. Well, I remember it was shortly before I was going to Europe, and Mr. Carmen was trying to persuade me not to go.

Q. Who?

A. Mr. Carmen or Mr. Warren was trying to persuade me not to go, and he had brought to my room Mr. Kramer, who said he had made a sale, and that he could sell the whole hundred thou-



(Testimony of Jacob Morris Danziger.)

sand dollars worth of stock in the one place if I would simply wait a while until he got it done.

Q. What did you say?

A. I told him that we had no desire to sell that much stock, and that I had a deal in England that I was going over on to close it up, and that I wasn't going to wait for any such thing.

Q. In any event, there has been considerable said about some form of swindle that was pulled on a Mrs. Pierce, as I remember it. Did that happen after you left for Europe?

A. Yes, sir, it did, and it was reported to me by cable from Mr. Carter or Carmen.

Q. Before I take up that phase, I want to refer to a number of exhibits that are now marked for identification only, and see whether there are any factors here that may or may not [1417] make these a subject of consideration. Here I have Exhibit I, for identification, which purports to be a letter to you from—a letter to you addressed to the Barbizon Plaza from the Sutherland Company in London, and I ask you whether you received that letter at or about the time approximate to the date it bears?

A. Yes, I received it in the mail approximately five or six days after the date it bears.

Q. Did you at any time, to your recollection, exhibit this particular document to Mr. Warren?

A. I feel fairly certain I did. I kept him acquainted, as I saw him, with what was going on

(Testimony of Jacob Morris Danziger.)

over on the other side, and I most likely showed him this letter.

Q. Well, the point is I would like to clear that up a little more certainly before I make an offer of that exhibit. To your best recollection did you exhibit this document to him?

A. Yes, that is my best recollection.

Q. While I am presenting that to the court as an exhibit in evidence, will you examine these documents respectively J and R. Take J first.

Mr. Rose: I now offer, your Honor, Defendant's Exhibit I for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Exhibit I, and was received in evidence.) [1418]

The Witness: Have you a question on this, Mr. Rose?

Q. By Mr. Rose: No. I wanted you to first examine those documents.

A. I have read it. I recognize this one without reading it. I know what it is. [1419]

Q. I have before me, marked J for identification, what purports to be some communications from the Sutherland Company from London during the period of June, '35, and ask you whether you received that while you were in New York City.

A. I did. It didn't have these pencilled notes, which I apparently put on myself. Aside from that, I did receive that form.

Q. When, in relation to the part of June indi-

(Testimony of Jacob Morris Danziger.)

ated on this letter from the Sutherland Company, did you receive it, to your best recollection?

A. Well, it is dated June 14, and I would say on or about the 20th.

Q. Do you recognize that handwriting?

A. I do. That is Mr. Sutherland's handwriting. It is one you couldn't forget.

Q. And the reply thereto?

A. A carbon copy of my reply which I find in my file.

Q. Did you exhibit to the witness Warren these documents which now compose J, for identification?

A. To the best of my recollection, I did.

Mr. Rose: I offer this, your Honor, a document now marked J, for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Defendants' Exhibit J, and was received in evidence.) [1420]

Q. By Mr. Rose: Was this document which is marked R, for identification, bearing the designation "Information on Trinidad and Trinidad International Ltd. Properties" at any time exhibited by you to the witness Warren?

A. I know that it was. I gave him a copy of it.

Mr. Rose: I offer R, for identification, into evidence.

The Court: Admitted.

(Testimony of Jacob Morris Danziger.)

(The document referred to was marked as Defendants' Exhibit R, and was received in evidence.)

Q. By Mr. Rose: I would like to give a little attention to these two exhibits that are in evidence, namely, 103, which is a form of letter of the Wake Development Company saying, "The bearer of this letter whose signature appears in the lower left-hand corner \* \* \*"; did you ever see this man or any person affix the signature of C. Cameron on this document? A. No.

Q. Or its original?

A. No, I never saw that until I saw it in the court room here the other day.

Q. Was this form of letter delivered in any manner to Great Eastern or any of its personnel?

A. Yes, sir, I think the letter without the signature in the lower left-hand corner was given to the Great Eastern people at or about the time they started to work under the contract. [1421]

Q. Here is an Exhibit No. 102, which seems to have some pencilled eradications and some memorandum. I will ask you whether you in any mode or manner participated in the preparation of that document or any facsimile thereof?

A. Well, I know the handwriting on it is not mine, and I don't think I had anything to do with its preparation.

Q. There has been some mention made here, generally, although I doubt whether the docu-



(Testimony of Jacob Morris Danziger.)

ment outlining the escrow has been produced in any form. There has been some testimony that you went to Wilmington, Delaware and set up an escrow. Do you have that in mind?

A. I do, sir.

Q. Tell us, briefly, about that.

A. Shortly after the Great Eastern arrangement was made, and shortly before I went to Europe, Mr. Carmen wanted me to go down to Wilmington, Delaware, to the office of the Great Eastern Company to complete an escrow of 20,000 shares of stock, which was covered by the Great Eastern contract. I went with him. I remember the occasion very well. We drove by automobile. We went to an office there, and I remember meeting a man who Mr. Carmen said was a Great Eastern—either representative or official, or something, named Dube, D-u-b-e, and we then completed an escrow with the Commonwealth Trust Company in writing; and then either then or shortly thereafter we deposited the certificates representing 20,000 shares. [1422]

Q. Now this escrow, in what manner was it to operate? The arrangements made with this escrow in Delaware, were these 20,000 shares to be issued to Great Eastern Gas holders through any form of correspondence from Los Angeles?

A. No. They were given authority to take from the 20,000 shares any number of shares if and when they could pay the Wake Development Company \$3.00 a share and the delivery of a share

(Testimony of Jacob Morris Danziger.)  
of Great Eastern natural gas stock. The escrow was a written thing.

Q. I know; but none has shown up in any of these proceedings.

Mr. Rose: Have you got it, Mr. Mainland?

Mr. Mainland: What?

Mr. Rose: Have you any of the papers so we can be familiar with the terms of the escrow set up with that trust company over in Delaware?

Mr. Mainland: Not to my knowledge.

Mr. Rose: They must have been in your files at one time, weren't they?

Mr. Mainland:-- I don't know.

The Witness: Mr. Rose, I have recently seen something, I visualize the Commonwealth Trust Company's name on some letter-head. Maybe you haven't got it, but I have seen something since we have started the trial of this case.

Q. By Mr. Rose: There has been some testimony here given by Mr. Warren, on both direct and cross-examination, [1423] that prior to your departure for England the plan was developed in which he participated in the literary phases of drawing up some proposed letters that I think at one point was referred to by his Honor in a quizzical way as to whether that was a build-up, and I infer from Mr. Warren's testimony that he and you sat down prior to your departure for England and prepared a form of letters that were intended to come out of the Los Angeles office to these potential pu-

(Testimony of Jacob Morris Danziger.)

chasers of the Wake Company's shares of Trinidad stock. Did anything of that type take place?

A. No. The only letter which I had anything to do with is the first letter that is written in my own hand here, which I have seen in evidence; and that is the only letter that I had anything to do with preparing in connection with that transaction, and I went to Europe shortly thereafter.

The Court: We will break the afternoon at this point.

Mr. Rose: Very well, your Honor.

(Short recess.)

Q. By Mr. Rose: Let's advert a moment to the matter of such letters that you refer to. You stated a moment ago in your discussion in the preparation of any letters that were to be utilized in this proposed Great Eastern deal, that you only participated in the drafting of one. I show you 100 in evidence. That is in your handwriting altogether, is it? [1424]

A. Yes, that is all in my writing. There is nobody else's writing on that but my own.

Q. Is it all yours? A. Yes, sir.

Q. I take it that No. 42 is the final draft of that thing, is it? A. I take it so.

Q. So far as your recollection serves, this was the ultimate draft?

A. Yes, it has many of the paragraphs exactly as they are written in that first draft, so I am satisfied that is the final preparation of the document that started in my own hand there (indicating).

(Testimony of Jacob Morris Danziger.)

Q. In the course of this testimony there was some preliminary discussion had with you and DeHart and Warren; there has been some mention made of South American corporations and rights. Do you remember the subject?

A. Yes, I do, Mr. Rose.

Q. Was that subject discussed with Mr. Warren?     A. I told Mr. Warren——

Q. We can infer if you told him, that it was discussed. Go ahead.

A. Well, it was discussed with Mr. Carmen and with Mr. DeHart. I explained to them——

Q. Don't give us your conclusions. I don't want to take up very much time with it, but tell us what the [1425] discussion was about so he will know what that phase of the subject is in this case.

A. I told him that the South American Company had created a right for its stockholders, in view of the fact that it at one time had had, through the Latin American Company, which it controlled, had had some option for purchase of these very same properties.

Q. What was said about rights?

A. I explained to them that a right had been issued. I think I showed them the form of it. I had it.

Q. He has mentioned you showed him some kind of a form of South American right.

A. That is my memory.

Q. What is that?

A. That is my memory.



(Testimony of Jacob Morris Danziger.)

Q. Go ahead.

A. Well, I showed it to him.

Q. Tell us something about it. It has been left in the air here. It hasn't been cleared up. What was it all about?

A. I showed him a form of printed right, which I have seen in evidence here in this court room in the trial of this case. Mr. Carmen said he——

Q. No. I want to know how did that right come in. What did the South American people have to do with the right? That is something that hasn't been—— [1426]

A. The South American Company and the All Americas Companies were the owners of a company called The Latin American Oil Company. The Latin American Oil Company at one time had had these very properties under lease or under option, and they were the ones that had that Huntley & Huntley report made. I entered into an arrangement with Mr. Shale, the president of the combined group of those companies, wherein they offered to their stockholders by a right; they never circularized it, but they had a right printed, which I have seen a copy of it here in the court room; I explained all that to Mr. Carmen and Mr. DeHart, and Mr. Carmen said he wanted to go and see, wanted to feel out the possibilities of the Great Eastern deal while we were negotiating. And I got for him the names of some of the South American stockholders and gave it to him, and gave him some of the printed rights, and he did something

(Testimony of Jacob Morris Danziger.)

on it and reported back that he didn't think they were any good, or something to that effect.

Mr. Rose: I showed this to you during the course of the cross examination of the witness Warren, but failed to have it marked. Do you remember it now?

Mr. Lucas: Go ahead and mark it and offer it, and if I think of any objections I will voice them.

Q. By Mr. Rose: I have exhibited to counsel for the government the carbon impression of a letter to R. W. J. Sutherland in London in October of '34, to which is attached [1427] an outline of an agreement on paper bearing "J. E. McGregor, Financial Consultant", with some London address. In whose handwriting is this purported document that mentions an agreement?

A. That is Mr. Sutherland's handwriting.

Q. Can you tell us, first, did you ever exhibit this document to Mr. DeHart or Mr. Warren?

A. I am very sure that I told them both before the negotiations, and my best recollection is that I showed them the correspondence from London concerning them.

Q. The matters that were set forth in this document were actually under consideration at that time?

A. They were. And these two yellow sheets dated October 5, 1935——

Q. '34, isn't it?

A. I can't tell; it is 4 or 5, is a carbon copy of the contract that I entered into to sell the

(Testimony of Jacob Morris Danziger.)

H. M. S. Petroleum Company the oil that might be produced from the Trinidad properties of the Trinidad International Petroleum Company.

Q. What is that attachment in the handwriting of Mr. Sutherland from England? What is that?

A. That is a suggested form of contract that he had evidently submitted to me; and my reply here is a remodeling in some form of that suggested contract.

Q. And you say to your best recollection you did [1428] exhibit that to Mr. Warren?

A. That is my best recollection.

Mr. Rose: I offer these documents, your Honor, as the defendants' exhibit next in order.

The Court: They are admitted.

The Clerk: Y.

(The documents referred to were marked Defendants' Exhibit Y, and were received in evidence.)

Q. By Mr. Rose: There has been some testimony here, Mr. Danziger, that you furnished certain material to Warren for salesmen's kits, I think is the way it has been described. Do you remember that testimony?

A. Yes, very vaguely.

Q. Did you furnish any material of any character to Mr. Warren to equip salesmen with kits?

A. No, not in that form. These documents that I have identified here, these photostat copies, and then this three or four page typewritten document of information, I gave to him. I don't consider

(Testimony of Jacob Morris Danziger.)

that that answers the qualifications of a salesman's kit, or anything of that character. I did give him that information in that form.

Q. Was there any discussion had between you and Mr. Carmen or DeHart respecting the modus operandi in their sales to be employed?

A. Not in the slightest. I had no interest in that.

Q. Was there any discussion as to whether they were to [1429] use any names other than their own?

A. No information of that character. They told me they were going to circularize their stockholders.

Q. So far as any communications that were to go forward up until the time you left for England, they were to be handled by whom?

A. By the Great Eastern Natural Gas Company.

Q. Was any arrangement made or any understanding had between you prior to your leaving for England—was there any discussion that Wake Development Company was to do anything?

A. Nothing more than to receive the proceeds that the contract provided for.

Q. The testimony here shows in certain exhibits that you received certain cables. Did you? I find these here chronologically, Exhibit K, which is a telegram bearing the purported signature of Joseph Dube, to Faulkner. Did that come into your possession?

A. It did at some time. I have seen it before.

Q. In any event, it wasn't originally transmitted to you, was it?



(Testimony of Jacob Morris Danziger.)

A. No. It is addressed to Miss Faulkner in care of Wake Development Company.

Q. I have here Exhibits L and M, which purport to appear as original cablegrams, bearing date November 9 and November 16; you received these while you were in London?

A. I received those in London at about the time they are dated.

Q. Had you any prior information, prior to receipt of these cablegrams, about the activities of this man referred to therein as Kramer, in his dealings with a Mrs. Pierce?

A. Nothing more than what he told me when I met him in New York with Mr. Carmen, that he had made a sale to somebody. I think that is the name.

Q. Then you received these advices set forth in Exhibits L and M while you were in London?

A. I did.

Q. What did you do?

A. I think I sent a cable that you have, or letter. I did something about it.

Q. You say I have a cable?

A. Well, that is my impression.

Q. Now, I wouldn't have a cable that you sent to somebody else.

A. There is a copy of some cable of mine that I have seen on the back of a cable, concerning that subject matter. [1431] Or it may be that I replied by letter. But I know I have seen a cable, another cable than those, that I wrote a reply on the back

(Testimony of Jacob Morris Danziger.)

of, and I think you also have some letters that I had communicated either to Mr. Carmen or the Commonwealth Trust Company or somebody.

Q. Well, tell us the ultimate thing. What did you do?

A. I cancelled the Great Eastern deal and notified the Commonwealth Trust Company that the escrow was cancelled, and they were not to make any more deliveries of it.

Q. What, in point of development, following that, took place to your best memory?

A. I got some letter from Mr. Carmen, that I think you have here.

Q. You refer now to Exhibit G, in evidence?

A. Yes; and I think there is another letter to Mrs. Faulkner on this same subject.

Q. I have the letter you refer to. That is Exhibit N, the letter addressed to "My dear Carmen"; is that the one you have in mind?

A. I think it is, Mr. Rose. What is the date of it?

Q. October 14th.

A. This is an acknowledgment of that. That is an acknowledgment of this letter. It refers to it. I sent this letter to Mr. Carmen. It is my letter. This is a carbon of it.

Mr. Lucas: What exhibit is that, Mr. Rose?

Mr. Rose: That is N, in evidence. The witness Carmen acknowledged receiving this letter, or the original of it.

Q. By Mr. Rose: After that, tell us what you

(Testimony of Jacob Morris Danziger.)

did after you arrived in Europe? Did you have anything to do with any sales that were going on during your absence in England?

A. No. Mr. Hill, secretary of the company, one of the owners of the company, who——

Q. No. I mean in respect to any of Mr. Warren's or his crew's sales of this Wake stock?

A. No, I had nothing to do with it. When I went to Europe I told them to do their business with the office, and gave them some written instructions as to just how to communicate with the office and continue their business there; and I didn't have anything to do with the details of it from then on.

Q. When you arrived in England, what went on there in connection with this Trinidad business?

A. Mr. Hill, one of the three owners of the property in Trinidad, the one with whom I dealt with in connection with the organization of the company, had told me that he had the finances of the company all arranged in England, and he elected himself as secretary of the company, and he took with him the stock books of the company, stock certificate books, and went over there, as he told me, to deliver some treasury stock of the company, that the company had authorized him to [1433] sell, for money to go into its treasury for the purpose of developing the Trinidad property. He had been over there quite some time, and I had finally gotten some reports out of him that indicated that he had made some sales, and none of

(Testimony of Jacob Morris Danziger.)

the money came to the company in Los Angeles. I was demanding it. And he had taken with him a Mr. Aronson——

Q. Who was Aronson, by the way? His name has come up here.

A. He is the same Mr. Aronson that Mr. Mainland interrogated me about as to being a mythical Mr. Aronson. But he is the man who introduced Mr. Hill to the Howe people who had me meet him and discuss the organization of the company that they wanted to organize down in Trinidad. Apparently Hill took him with him when he went to England to complete the financing of the company, and after a time, a considerable time, Mr. Aronson came back from England and he told me that Hill had been selling a lot of stock, but he had been delivering his own and putting the money in his pocket; and I couldn't get very much out of Mr. Hill as to what he was doing, and I was corresponding with Mr. Sutherland who knew him very well, because Mr. Sutherland had negotiated with Mr. Hill for the old English companies, which Mr. Sutherland headed, who acquired the property years before, and Mr. Sutherland told me he didn't think all was going very well. [1434] Anyway, I had the company give me authority, and it appears in their minute book, I have seen it since I have been here, to go over there and find out what Hill had been doing, and if necessary to prosecute him if he had done anything wrong. We had had a letter from some friend of Mr. Sutherland, to whom



(Testimony of Jacob Morris Danziger.)

he had sold some shares, that indicated he had delivered his own stock. The first thing I did when I got over there was to get in touch with Mr. Hill, to try and find out just what had happened. And I confirmed the fact that whatever sales he had made he had, instead of delivering treasury stock, he ostensibly sold treasury stock and he delivered his own, and the money went in his pocket, and he politely asked me what I was going to do about it. He had had a negotiation there with some brokerage house toward handling a large issue for the company, and Mr. Aronson had told me that, and told me who they were, and I saw them and I picked up the threads there, and with Mr. Sutherland's co-operation I worked along on a deal there for some considerable time. It had its offshoots and ramifications, but it finally resulted in the deal I made for company financing for the purpose of drilling five wells to cost \$75,000.00 with the Anglo something company. Its name I can give you from some correspondence, but it was Colonel Nicholson's company, and it is the deal I finally wound up just before I got on the boat and came back from London to the United States. [1435]

Q. There has been some mention made, I note here, I haven't had a chance to correllate some of this correspondence, but I notice there are some matters concerning a visit on your part to France while you were over there.

A. I think Mr. Sutherland had had some dealings for the company treasury stock with a man

(Testimony of Jacob Morris Danziger.)

in Paris named Moreau. I remember going over to Paris and seeing him and discussing the situation with him.

Q. There has been mention made of a trip of yours to Sicily. What is that about?

A. Before I left the United States, and some time before I left Mr. Carmen, I had presented to me an oil concession in the Island Sicily, that I looked into pretty carefully and discussed the situation with a geologist named McColloch, who had been down there for about a year and a half examining the oil possibilities. A man named Pagliuchi had a concession, which I still have, and it was for about half the Island of Sicily. It embraced some fifteen different possible oil areas. I decided if I could get that thing financed, that I would put into the Trinidad Company some portion of that concession. When I was in England, after I had been there some months, I got myself down to Sicily, met Mr. Pagliuchi, went all over the island from one end to the other, spent five or six weeks, Mr. Pagliuchi furnished the car and I furnished all the expense, and I found that the most likely looking oil area was just [1436] outside of his concession, and I negotiated and spent some considerable time there to get added to his concession these areas that were very attractive, lying outside of his concession; then I went back to London to carry on these negotiations with the Nicholson people. Negotiations in Great Britain are not done like they are here. You meet on

(Testimony of Jacob Morris Danziger.)

Monday, and you spend half a day saying good morning, and then you make a date for the following Friday and get a few minutes. And those negotiations with Colonel Nicholson's company were—oh, they were protracted over a long, long time. While negotiating with him I called their attention to the fact that oil royalties in the United States were offering a profitable medium if they were properly bought; and they liked the idea sufficiently so that they made an arrangement with me whereby they set up an oil royalty investment trust and entered into a contract with me that I would buy their royalties for them in the United States on a profit basis to myself. And that transaction was completed and the company was organized. It was organized in the United States through my law office, the resignation of the directors was handed to them, they elected their British board and got quite some money together, and they said, "You go on home and do whatever is necessary to get in shape to buy these oil royalties, and within a few weeks we are going to furnish the Trinidad the \$75,000.00 we agreed to." And I got on a boat and I came on home. [1437]

Q. Let's stay in Europe for a moment.

A. All right, sir.

Q. I recall there has been some question raised here as to whether—when you left England for the United States did you have that actual agreement or, as Mr. Mainland indicated in his argument with

(Testimony of Jacob Morris Danziger.)

you at the time you discussed that subject, that it was merely a promise of an agreement?

A. It was an agreement where they agreed they would furnish the company \$75,000.00 to drill five wells. They were waiting, as all brokerage houses do—they don't put up their own money, they git it from a syndicate or customers—and they were dealing for another property in Trinidad to put in with it, and said that within a very few weeks that money would be forthcoming, and told me to get my organization together and get ready to drill, and for me to go on down there and do whatever might be necessary towards registering the company and so forth.

Q. Somewhere in this maze of documentary evidence there appears to be a report of the Trinidad International Petroleum Company holdings by E. H. Cunningham Craig, I won't bother about translating the various degrees that he has. If my memory serves me, a copy of this report went forward to, I believe it is Mrs. Parsons, or I may be in error; is that correct?

A. Yes, and to Mr. Carmen.

Q. Tell us what connection you had with this report [1438] and how it comes about and what part it has in this Trinidad deal?

A. When I got my first contact with the Anglo, whatever it is, 'Colonel Nicholson's firm, they said they would not consider any venture until they first had a geological report; they said they had employed E. H. Cunningham Craig to make a



(Testimony of Jacob Morris Danziger.)

report for them on the properties. They told me they were paying him a thousand pounds so to do. And the negotiations suspended until they got the report. And I had several conferences with Cunningham Craig during the period when he was assembling his report. They got the report and gave me a copy of it, which I sent to Los Angeles, and I am satisfied I sent it to Mr. Carmen and anybody else that I could send it to that had any interest in the property, because the report gave me more enthusiasm than I had had up to that time concerning these properties.

Q. Who was this E. H. Cunningham Craig?

A. He is recognized in England as a leading geologist in England, particularly for this Trinidad. He had been—well, I guess, government geologist. He lived in Trinidad for a great many years, and he had been the government geologist in that area, and he knew Trinidad and Trinidad lands and Trinidad oil possibilities probably better than any other geologist, and he told me during one of my conferences with him that he was the fellow that located this well that was on the property that Mr. Sutherland's old English company [1439] drilled many, many years before.

Mr. Rose: Has your Honor had occasion to read this, or shall I introduce it as a separate document?

The Court: I read the one in evidence.

Mr. Rose: I think it is attached to a letter to Mrs. Parsons, or somebody.

(Testimony of Jacob Morris Danziger.)

The Court: I have read it.

Q. By Mr. Rose: Let's clear up the business in general. How much did Wake Development Company, during your sojourn in Europe, during that approximately two-year period, how much did it receive in gross from any of this Great Eastern transaction? I have in mind by "Great Eastern transaction" Mr. Warren and his associates?

A. My best recollection is around between five and six thousand dollars.

Q. During that two-year interval?

A. Yes.

Q. To your recollection how much was grossed by Wake Development Company from the inception of the sales, starting in New York before your departure to Europe, up to the last sale?

A. In 1940, the last sale was made in 1940. To my recollection, around \$10,000.00.

Q. Your best recollection is——

A. Around \$10,000.00, yes.

Q. I think we might as well pick up with your return [1440] from Europe. You returned from Europe when? A. In July 1937.

Q. And upon your return did you see Mr. Warren? A. I did.

Q. Where did you see him?

A. In New York at my hotel.

Q. In relation to your return, when was it you saw him?

A. Within a day or so of my return.

Q. Will you tell us, you being a lawyer I will

(Testimony of Jacob Morris Danziger.)

ask you to lay the foundational facts without my taking time to develop them, tell us the approximate date you know, who was there and so forth?

A. I had written to Mr. Carmen and told him I had to arrive at a certain day, and I thought I would go to the Barbizon Plaza, but if I didn't I would get a note there for him; and I arrived there I think it was around the 20th of September, I remember I took a slow boat; I think I left over there on the 12th, that is my best recollection on dates, and within a day or so I heard from him, he either phoned me or came, and I saw him twice, possibly three times; but either on the first occasion or on the second he brought a man that he introduced to me as Mr. Arthur Winslow. Mr. Carmen told me that he had been into some difficulties in Chicago, he had been convicted, his case was pending on appeal. I remember him showing me the brief and I made some [1441] comment on it. And he told me that he wasn't going to have anything further to do with the Great Eastern deal, and that Mr. Winslow would be the man who was taking over. And Mr. Winslow, seemingly, confirmed that.

Q. The name Winslow has come into this hearing here on a number of occasions. It may not be amiss to give us a description of that gentleman.

A. The only way I can describe him is to compare him with Mr. Carmen. He was a little fellow, and I call Mr. Carmen a big fellow. And beyond that I can't describe him. Well, I think I met

(Testimony of Jacob Morris Danziger.)

him twice, because he carried on some negotiations with me to buy some stock flat. I mean by that at a fixed price.

Q. Tell us when you met Mr. Winslow was Mr. Warren present?

A. Mr. Carmen brought him in and introduced him to me.

Q. Tell us what was said? Let's clear that up as well as we can. Tell us what was discussed at this time, outside of the introduction?

A. Mr. Carmen or Mr. Winslow, either one, told me that Winslow had some kind of a deal on that he wanted to buy some of the Trinidad stock at a price better than the arrangement with the Great Eastern Company. I agreed with him to sell him, I forget the number of shares, but I remember the price was very considerably less. [1442]

Q. What was it? Do you have any recollection of that?

A. No, I don't know. I could take some figures and put it together. But he came back subsequently; he didn't tell me that he had made a deal, he didn't tell me who he was dealing with, but he came back subsequently with a check from Mrs. Parsons, and it was \$7,000.00 or \$6,000.00, the check we speak of here, it was \$7,000.00 made to him, and then wanted, and I put in the way of delivery to him, because the stock was issued to him and receipted for by him, whatever number of shares he had bargained for. He gave me the check, I sent it out to California, and my best



(Testimony of Jacob Morris Danziger.)

recollection is that I waited there until the check cleared, and then I gave him either a bank draft or some form of check or draft, because I would have remembered if I handled it in cash, I never handled that large a sum of cash, I gave him some form of bank draft that had been sent on to me from Los Angeles for the balance of the \$7,000.00 check over and above—my impression is that it was a thousand dollars that the Wake Development Company was getting out of that transaction we had negotiated, and I delivered him the stock. It was sent on to California, it was in his name.

Q. The name of whom?

A. Arthur Winslow, and some of that stock, or all of it, is in the records here, because it came in for a transfer at some time. It has got Mr. Winslow's name on the back of it. I think I have seen it since we have been in this court [1443] room.

Q. Mr. Warren testified here that there was some kind of a deal between you, Warren, I think Mr. Shaffer and a Mr. Robbins, if my memory serves me. Did you ever meet or know of a Mr. Robbins?

A. I never heard of the name—Robbins, I heard that name in the court room here. The other name I never heard until I heard it in the court room. And I had no dealing with anybody excepting Mr. Winslow, and my best recollection is that when Winslow was negotiating, Carmen didn't come there; that Winslow came the second day and he came by himself.

(Testimony of Jacob Morris Danziger.)

Q. Did you have any idea that these people had cooked up a deal of any kind with Mrs. Parsons culminating into the being of this \$7,000.00 check? [1444]

A. No. When Mr. Winslow brought the check to me, it was Mrs. Parsons' check, I imagined he had done some business with Mrs. Parsons.

Q. Did you after your return from England have any discussion at all about a proposed sale to Mrs. Parsons?

A. No, that wasn't mentioned to me at all. He simply said he had a deal and he was going to buy some stock flat for his own account.

Q. But you did come to some knowledge that there had been a transaction had?

A. Yes, when Mr. Winslow finally came in with the check it was Mrs. Parsons' check.

Q. Other than that did you participate in any plan or discussion with Mr. Carmen or anybody else respecting the sale to Mrs. Parsons of Wake Company's stock in Trinidad?

A. At that time, no.

Q. Before your return from London was there any matter that came to your attention about a proposed sale to Mrs. Parsons?

A. There was some correspondence that indicated that she was a stockholder. I remember writing her some letter. She seemed to be disturbed about her stock. I think that letter carrying that Cunningham Craig report on it was something to

(Testimony of Jacob Morris Danziger.)

do with it. I think I have seen those letters in evidence here.

Q. There has been some letter here, without taking the [1445] time to single it out of this mass of data, which reflects that there was some sort of arrangement made for you to call upon Mrs. Parsons on your return from England?

A. I never did call, have never been asked to call, and I think I know what you refer to; something in one of my letters to Mr. Carmen where I said I would help with Mrs. Parsons, or to whoever it was that was handling the thing at that time. What I probably had in mind was——

Q. No, let's stay away from probabilities. You mentioned this man Winslow. I have removed from Exhibit No. 73 Certificate No. 236 for Trinidad International Petroleum Limited stock made to Arthur Winslow, and bearing a transfer endorsement with the name Arthur Winslow; is this Arthur Winslow whose name appears on that certificate, executed on the 25th day of July, 1937, the Winslow that you have told us was introduced to you by Mr. Warren? A. It is.

Q. Was there any discussion had between you and Warren respecting the subject of whether he was in any manner going to sell any Trinidad or Wake stock from that point on?

A. He told me that he was turning the deal over to Mr. Winslow in behalf of the Great Eastern people, and that he wasn't going to have anything more to do with it.

(Testimony of Jacob Morris Danziger.)

Q. To your knowledge did Mr. Warren make any sale of any character or description of Wake owned Trinidad or Trinidad stock after your return from England? [1446]

A. To the best of my knowledge he never did.

Q. Did you at any time have any knowledge or information, or know that the person who has appeared in this proceeding and has stated his true name as being Warren, ever used the name of George Carlton?

A. I have never heard that he did. I never knew that he did.

Q. Did you ever know that he had assertedly resorted to or used the name of A. L. Roberts?

A. I never did until I heard him say so in the court room.

Q. Did you ever at any time know that he had resorted to utilizing the name of W. E. Edwards?

A. I did not until I heard him say so in the court room.

Q. Did you ever know that he had on any occasion resorted to representing himself as a person named George Williams?

A. I don't think I have ever heard him say that, even in the court room; but I never knew it before, at least.

Q. Did you ever know or have any knowledge at any time that he had represented himself to anyone as a person bearing the name George Wilson?

A. I never did.

Q. Did you at any time have any knowledge or



(Testimony of Jacob Morris Danziger.)

information that the said Warren had represented himself to any person or [1447] anyone as a person bearing the name of George Dawson?

A. I never did.

Q. Did you at any time have any knowledge or know that said Warren had represented himself to any person at any time as being an individual named A. L. Baker?

A. I never did.

Q. Did you ever know or have any information or knowledge that the said Warren had resorted to or utilized in any transaction, or to any person, or represent himself as a person bearing the name of George Carver?

A. No, I never did.

Q. Let's see if I missed any that he has testified to. I think he mentioned some other name, your Honor, that came like a bolt from the blue that isn't even mentioned.

The Court: What is the other name beginning with a C, Mr. Lucas?

Mr. Lucas: Cameron.

Mr. Rose: Yes, Cameron.

Q. By Mr. Rose: Did you ever have any knowledge that Mr. Warren had ever resorted or presented to any person, or held himself out to be a man named Cameron?

A. I never did.

The Court: What was the other name beginning with C, Mr. Lucas, to whom money was sent?

Mr. Rose: That is Carlton, your Honor. That is covered in the indictment, the name Carlton.

The Court: Did you ask him about that?

Mr. Rose: Yes, your Honor.

(Testimony of Jacob Morris Danziger.)

Q. By Mr. Rose: Do you know if he ever used the name Cameron?

A. I never did.

Q. Mr. Warren here in this testimony on examination in chief has testified——

Mr. Rose: Am I in error about this, Mr. Lucas? The first transaction that you interrogated him about that has touched upon in the indictment was the Florence Lawyer transaction? Am I correct in that?

Mr. Lucas: No. I think we talked on the Parsons transaction, it being the first one. I think I followed it in chronological sequence in the indictment.

Mr. Rose: You mean the original Parsons transaction?

Mr. Lucas: Count 1 in the indictment is the one I started Carter on, and I followed it right through. [1449]

Mr. Rose: I take very few notes. I don't even find a reference to that. Does that correspond with your Honor's recollection, that the first transaction we are talking about, other than this transaction upon his return from England was Parsons?

That couldn't possibly be a subject of a count in the indictment in '37. Are you talking about that transaction?

Mr. Lucas: If I understood you correctly, you asked me what transaction I questioned Mr. Carter about first.

Mr. Rose: We do come to a transaction, of

(Testimony of Jacob Morris Danziger.)

course, with Mrs. Parsons in 1940. I don't know how you could have taken that up first in order. If you are talking about your inquiry about the Parsons transaction culminating in the \$7,000.00 check that is in evidence, of course, you have in mind that is not a count in this indictment?

Mr. Lucas: That's right.

Mr. Rose: Does your Honor's recollection correspond that the first transaction—he did go into the '37 transaction with Parsons, over my objection, which your Honor will remember I claimed could not be an issue in this indictment because it was obviously a transaction too antecedent to the time of the filing of this indictment to become an issuable transaction, except insofar as it affects the relations with the parties and so forth.

The Court: I can't help you out, Mr. Rose. I don't recall what you are inquiring about. [1450]

Mr. Rose: In any event, I feel that I have covered the '37 transaction regarding Mrs. Parsons, in my examination of this witness.

Q. By Mr. Rose: Now, there has been some testimony here on the part of the witness Warren that he had a transaction with a Mrs. Florence Lawyer, to whom he represented himself as a representative of the Sterling Securities Company, in which he claims he resorted to the use of the name Roberts, and also sent a man, subsequently, to see her named Callahan. Firstly, did you ever know or have any knowledge that Warren had ever rep-

(Testimony of Jacob Morris Danziger.)

resented himself as a representative of the Sterling Securities Company?

A. I never heard that name until it got into this case here.

Q. Did you ever discuss with Warren, as distinguished from any other person, the disposition on the part of the Wake Development Corporation to accept any of these groups of Canadian stocks mentioned in this indictment as part of the purchase price of any shares of stock?

A. Not with Mr. Carmen.

Q. Well, I would prefer that you answer that question by his true name so that will cover the identity of the individual.

A. Not with Mr. Warren.

Q. All right. With whom, if anyone, did you discuss the subject of the Canadian stockholders, that is, any list [1451] of Canadian stockholders?

A. I don't know what you mean by Canadian stockholders, Mr. Rose.

Q. Well, in the course of this testimony here, and documents, there are some Canadian mining companies.

A. I didn't know they were Canadian. There have been two mining companies, Golden Quebec and something, I don't remember the other name. Is that what you mean?

Q. Yes. Wait until I get this out of the indictment here, and then I will address your testimony specifically to the firms mentioned here. Here it is. Have you any knowledge of the corporate



(Testimony of Jacob Morris Danziger.)

structure of a firm known as Golden Quebec Mines, Limited?

A. Well, I know there is such a company.

Q. Have you any knowledge of the corporate structure or the personnel connected with the firm known as the South McKenzie Island Mines, Limited?

A. I know there is such a company. That is all I know about it.

Q. Did you at any time have occasion to discuss with any person the shares of stock in any quantity whatsoever of the companies that I mentioned, named the Golden Quebec Mines, Limited, and South McKenzie Island Mines, Limited?

A. Yes, with Mr. Winslow.

Q. Tell us where and when and under what circumstances this subject of a disposition on the part of Wake Company, [1452] in connection with potential sales of its Trinidad stock, in any transaction involving any of these mining companies came up?

A. In September '37, when I met Mr. Winslow, on the only occasion that I met him, I mean it was a period of two or three days, I might have met him over that period, he told me he had——

Q. Let's clear up that date?

A. I left London on the 12th of September, and I probably got to New York about the 20th.

Q. That is why I would like you to have your passport.

A. I will bring it to you.

Q. I can't lead or suggest something to you,

(Testimony of Jacob Morris Danziger.)

but I would like you to give some attention to that date, because you are speaking of leaving London in September, 1937.

A. No. It was in July. I beg your pardon. It was just the other way. I left here in September. July 12th, London or Southampton. I got here about the 20th, and within a very few days of that is the time I met Mr. Winslow and the only times that I met him.

Q. And it was with Mr. Winslow that you discussed this Canadian business?      A. It was.

Q. Tell us about that.

A. Mr. Winslow asked me if he might have some Wake stock on the basis that he was purchasing some from me flat [1453] for some stockholders of the—naming those two mining companies, and I told him that he might.

Q. Was that subject of disposition on the part of Wake Development Company to sell its shares of Trinidad stock in any deals involving the taking in of any mining company stock ever discussed with Mr. Warren?      A. No, sir.

Q. Did you have any knowledge whatsoever of what representations had been made by Mr. Warren or his confederate, he is named as Callahan, in his transactions with the lady known as Florence Lawyer?

A. I never heard the name Callahan until I saw it in the indictment. No one ever told me that either he or Mr.—well, no one ever told me

(Testimony of Jacob Morris Danziger.)

who was negotiating the transaction with Mrs. Lawyer, whether it was Mr. Carlton at that time or not, I don't know. But I can get my file and tell you in a hurry.

Q. You have heard Mr. Warren's testimony as to the representations that he made in his initial negotiations with this lady, Florence Lawyer; you heard that here in court?

A. Well, I may have, but I don't remember what it was, Mr. Rose. I listened to what was going on here, but I didn't take it into my mind. I don't know now what it was.

Q. Did you ever authorize Mr. Warren, or any other person whatsoever, to tell any person anywhere at any place [1454] that the shares of stock of the Trinidad International Petroleum Company had ever been on the London stock exchange?

A. I never did to anyone.

Q. Or on any other exchange?

A. I never did.

Q. Did you ever authorize Mr. Warren or any person whomsoever to represent to any person anywhere at any time or any occasion that the Trinidad International Petroleum stock was listed on any exchange in Canada, the United States or elsewhere?      A. I never did.

Q. Incidentally, did you ever send Mr. Warren any papers from England containing the Trinidad stock quotations?

A. To the best of my recollection, I never did.

Q. Did you ever suggest to Mr. Warren, in any

(Testimony of Jacob Morris Danziger.)

manner, that he might know how to use such paper?     A. I never did.

Q. Did you have any knowledge at any time, from your connection and association with the Trinidad company or the Wake company, from its inception, up to the time that you went on trial, that any person or persons calling on any of the persons who communicated with either Trinidad company or Wake company concerning its securities was representing himself under any name other than his own?     A. I had no such knowledge.

Q. In the course of your connection with the corporate [1455] defendants, the name of A. L. Roberts has been mentioned here. Did that name come to your attention in any manner?     A. It did.

Q. Can you tell us in what manner that name came to your attention?

A. Dr. Hazelton had some of the stock sent in for transfer to Mr. Roberts. And it was done. I think I signed the certificates.

Q. At the time that this transaction was had, did you have any knowledge as to the true identity of A. L. Roberts?     A. I did not.

Q. Did you at that time entertain any idea that Warren, or Carter, or Carmen, was resorting to the use of the name of A. L. Roberts, or Roberts in any form or manner?     A. I did not.

Q. From the time of your connection with the corporate defendants who are now on trial, the Wake company and the Trinidad Company, up to the time you went on trial, did you have any knowl-



(Testimony of Jacob Morris Danziger.)

edge that any person under any name had approached any person anywhere and offered to repurchase preferential notes or shares of stock if these people were to exercise their rights in getting them?

A. Well, you'd better repeat that question, Mr. Rose, as to time.

The Court: Do you expect to be able to complete your [1456] direct examination this afternoon?

Mr. Rose: I haven't touched upon these various transactions, your Honor. I don't think so.

The Court: It is past 4:30, if you would like to adjourn.

Mr. Rose Yes.

(Whereupon, at 4:35 o'clock p.m., Thursday, February 1st, 1945, an adjournment was taken until 10:00 o'clock a.m., Friday, February 2, 1945.)

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Los Angeles, California,

Friday, February 2, 1945, 10:00 A. M.

The Clerk: United States vs. Danziger, et al.

JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

(Testimony of Jacob Morris Danziger.)

Direct Examination (Resumed)

Mr. Rose: Have you got the last question, Mr. Reporter? My impression is it was left unanswered.

(The last question was read as follows:

“From the time of your connection with the corporate defendants who are now on trial, the Wake Company and the Trinidad Company, up to the time you went on trial, did you have any knowledge that any person under any name had approached any person anywhere and offered to re-purchase preferential notes or shares of stock if these people were to exercise their rights in getting them?”)

The Witness: My impression is that I did have concerning Mr. McCoy who had written in to the office telling of some such situation; and I am not sure, but I think Mr. Russell. But the file will show more carefully.

Q. By Mr. Rose: When these advices came to you, what did you do, if anything, about it?

A. The first thing I did in Mr. McCoy's case was to [1459] write him on the subject and have him give me the fullest detail that he could; and I wrote to Carlton and told him what Mr. McCoy had said, or possibly sent him a copy of the letter, to try to find out what he could, what some of his men might be doing.

Q. Did you at any time in behalf of yourself or these companies authorize any such representation?

(Testimony of Jacob Morris Danziger.)

A. We never did, and we repudiated them at every opportunity.

Q. Would you have permitted any of the persons connected with Trinidad Company or the Wake Company to have gone through the sale, having any knowledge that any such representations had been made?

A. We never would have, and I think there were some instances where we refused to make a sale where there was any indication of a promise. I think in that Lawyer case something had been said to Mrs. Lawyer that she wrote in, that indicated they were promising her a quick profit or a repurchase, or something of that character, and I remember very distinctly, it is in the file here, telling her that we wouldn't let her have the stock under those conditions.

Q. That brings to my mind that in the testimony of Mr. Warren he stated, in effect, that in each instance where the letter has in it something reflecting reluctance, seemingly, on the part of Wake Development Company to make the sale, that he suggested that as a build-up or had some participation in [1460] the preparation of such proposed letter; is that true?      A. He did not have.

Q. That, in turn, brings to mind, Mr. Danziger, some letter, I can't identify it by number at the moment, but you will remember Mr. Lucas in his argument, I think, read from that letter, in which the letter, in substance or effect, proposes to state, in reply to an offer to purchase the Trinidad shares

(Testimony of Jacob Morris Danziger.)

of stock, that you or the company would consider, and you seemed to manifest a reluctance to make the sale. Do you have that in mind?

A. I have in mind that we frequently didn't want to make a sale when the situation in England was such that the drilling of some wells was imminent.

Q. Was there, in fact, from time to time, during the course of years, such situation?

A. There was continuously from early in 1935 right up to—well, I would say even last year, and you will find it in the correspondence.

Mr. Rose: You haven't seen this yet. I will have you look at it, Mr. Lucas.

Q. By Mr. Rose: I have exhibited to counsel a document on the letter-head of the R. W. J. Sutherland & Company, under date of January 17, 1939, from London; I will ask you to read that document and state how that came into your possession.

A. This letter was mailed to me by Mr. Sutherland at [1461] or about the date it bears; had attached to it this yellow three or four page letter.

Q. On this yellow part of this letter there is some handwriting at the bottom addressed to you. In whose handwriting is that.

A. That is Mr. Sutherland's.

Mr. Rose: I offer this document, your Honor, as defendant's next in order.

The Court: Admitted.

The Clerk: Z.

(The document referred to was marked as



(Testimony of Jacob Morris Danziger.)

Defendants' Exhibit Z and was received in evidence.)

Mr. Rose: I thought it might be a good idea if your Honor would read that letter, because I wanted to advert to some of the things that are set up in that communication.

Q. By Mr. Rose: I have exhibited a communication from England bearing date of June 21, 1933, touching in part on the quality of oil. I will ask you where did you receive that communication and from whom?

A. I received this in New York from Mr. Sutherland about the time that it was written, addressed to me and signed by him.

Mr. Rose: I offer this in evidence as defendants' next in order.

The Court: Admitted.

The Clerk: AA. [1462]

(The document referred to was marked as Defendants' Exhibit AA, as was received in evidence.)

Q. By Mr. Rose: In connection with the subject of proposed drilling of wells on these properties, what steps had you taken and on what occasion, looking to that objective?

A. Before I went to England I had arranged with Mr. Joe Coughlan to take charge of the actual drilling in Trinidad, and had him make preliminary inquiries, which he reported to me by letter, as to costs of material, availability of la-

(Testimony of Jacob Morris Danziger.)

bor, and other items that are covered in the letter I gave you a moment ago, Mr. Rose.

Q. You have handed me a document. We know the document speaks for itself from a legal point, but will you identify it?

A. This is the report from Mr. Coughlan that I am speaking of. This is a title report from Mr. Andrews there (indicating).

Q. What is this?

A. That is a schedule of the 200 leases that make up the Trinidad properties, and Mr. Andrews refers to them there in his report of the titles. This other document is the report from Mr. Coughlan, as I said, employed to go down and do the drilling.

Mr. Rose: I offer the document of September 18, 1935, which commences with the words "Dictated by Joe Coughlan," as defendants' next in order. [1463]

The Court: Admitted.

The Clerk: BB.

(The document referred to was marked as Defendants' Exhibit BB, and was received in evidence.)

Mr. Rose: I offer the document or documents which have been identified as a title report, as defendants' next in order.

The Court: Admitted.

The Clerk: CC.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendants' Exhibit CC, and was received in evidence.)

Q. By Mr. Rose: Now, there has been some mention made in the course of the testimony here, on the part of the witness Warren, to the effect that you and he discussed or devised some formula in the nature of one or two codes. Do you recall that testimony?

A. Well, I heard him say something about codes. I don't remember the details of just what he said.

Q. Did you at any time discuss with him the utilization of any code whatsoever?

A. No. That code that appears on some of these letters is something that he and Mrs. Faulkner worked out between them after I went to Europe.

Q. You notice that these codes are in a certain handwriting on certain exhibits?

A. Yes, they are all in my sister's handwriting on [1464] our papers. None of them are mine.

Q. Did you at any time discuss with him the use of a code in any manner or form?

A. No, no, not to my knowledge.

Q. There has been some mention made of a letter purported to have been signed by Dr. Padelford; do you remember that?

A. Yes, I do, very well.

Q. Who is Dr. Padelford, incidentally?

A. Dr. Padelford is a director in the Trinidad Company. He had formerly been general superintendent in our Mexican properties, and when I

(Testimony of Jacob Morris Danziger.)

organized the Trinidad Company he agreed to become a director and take charge of the overall development of our properties if and when we got ready to drill.

Q. What is his experience, to your knowledge?

A. Well, he had been for some thirty years the general superintendent in the development of all of the Mexican Petroleum Company properties in Mexico.

Q. Have you any knowledge of Dr. Padelford ever sending any communication to Warren or to any person?

A. I never did. He has never had any contact with him whatever. He had nothing to do with that letter, and never signed any such letter, and I never sent any such letter to Mr. Carmen, as he testified. Never heard of it until we got into the court room. [1465]

Q. Did you have any knowledge of the representations made by Warren, or any of his confederates, in the transaction related and testified to by him, in the sale to the person called Pitts?

A. No, I never had any knowledge of any of the details of the transaction with Mr. Pitts beyond what is in our correspondence.

Q. He testified concerning a transaction with one F. A. Russell. Did you have any knowledge or information respecting and concerning the representations made by him or any persons acting with him, or any person who, in fact, called on F. A. Russell?



(Testimony of Jacob Morris Danziger.)

A. I never had any knowledge of it.

Q. Did you have any knowledge or information respecting the representations or the manner in which the sale had been negotiated with the lady called Adeline Skinner?

A. I had no knowledge of it.

Q. Did you know that a Mike O'Brien, I think, had been sent to her, or did you ever hear of a Mike O'Brien?

A. No, I never heard that name; but I heard it here in the court room.

Q. Did you know what representations he had made?      A. I knew of nothing.

Q. In the transaction testified to by Mr. Warren with one E. Barrie Smith of Hartford, Connecticut, did you have any knowledge or information respecting the representations, [1466] the declarations that had been made preliminary to the Wake Company hearing from E. Barrie Smith?

A. I had no knowledge of it whatever.

Q. Did you know who had called on E. Barrie Smith?      A. No.

Q. What about Adeline Skinner?

A. The same holds true with all of them. I didn't know who called on any of these people.

Q. Did you have any knowledge or information concerning and respecting the representations that had been made by the person or persons who called on the individual identified in this case as Michael Burns of Peekskill, New York?

(Testimony of Jacob Morris Danziger.)

A. I didn't know who called, and I don't know what anybody said to him.

Q. Now, we come to Dr. J. Arthur Hazelton. Did you have any knowledge or information respecting the representations or declarations made by the persons who called on Dr. J. Arthur Hazelton, respecting the several transactions had with him?

A. No, I didn't have at the time. I don't know whether Dr. Hazelton ever wrote in afterwards and told us what had happened, or not. I would have to look at the file. But I knew nothing about who called on him or what representations were made to him.

Q. That brings us directly to the subject of Exhibit 34 in evidence. I now hand to you a letter bearing date [1467] March 14, 1940, in pen and ink, composed of some three sheets, and attached to it is an envelope addressed to Dr. J. Arthur Hazelton, Mantua, New Jersey; I will ask you to look at this document and state whether you ever saw such document?

A. I never saw it until I saw it here in the court room, Mr. Rose.

Q. Did you ever have any participation whatsoever in the transmittal of this document, or the letter or envelope, to Dr. Hazelton?

A. I did not.

Q. Did you ever know that such document purportedly had been sent out here to Los Angeles for mailing?

(Testimony of Jacob Morris Danziger.)

A. Not until I heard of it in the court room. I don't think this is one of the things that Mr. Mainland told me about; but he told me of some of the things that had been done. But I don't believe this was among them.

Q. Did Warren, or by any other name, or by his own name, ever inform you that he was having a transaction with Dr. J. Arthur Hazelton under the name of Roberts?      A. No.

Q. Did he tell you that he was negotiating with him under the name of Roberts?

A. He never did.

Q. Did you ever hear of Roberts?

A. Yes. Dr. Hazelton sent in to have some stock transferred to Mr. Roberts, some of his own stock, to be split [1468] up in Mr. Roberts' name. And I think ultimately sent them in again for re-transfer to himself. That is the only time I ever heard of the name Roberts, until I got into the court room. [1469]

Q. So far as your knowledge or belief goes, did you have any intimation that Roberts was anyone other than Roberts?      A. I had none.

Q. Did you have any knowledge that Dr. Hazelton had sent four money orders, I believe, to an individual under the name of Roberts?

A. I never heard anything about it.

Q. That brings me——

The Court: What was that question and answer?

Mr. Rose: I asked him about the four money orders, your Honor will remember, in evidence, that

(Testimony of Jacob Morris Danziger.)

were transmitted to a person named Roberts, and bear the endorsement of Roberts in New York, from —Dr. Hazelton sent them from New Jersey. Does your Honor remember that? Let me call your Honor's attention to it. Where is that exhibit with the money orders attached to it?

The Court: I remember it now. I thought you were talking about money orders from Los Angeles.

Mr. Rose: I haven't come to that. I have a note here that Dr. Hazelton sent four postal money orders from New Jersey to New York.

The Court: I remember now.

Mr. Rose: Does your Honor have that in mind? I think they are the four bottom ones of this exhibit here, No. 17. Incidentally, your Honor, so we will be clear on that, these [1470] others that your Honor has in mind, the six money orders that went from here to Carlton, I don't think has any relationship to the Hazelton transaction.

Mr. Frankenburger, if you can help me, can you give me that check for \$300.00 made to Roberts?

Q. By Mr. Rose: I show you Exhibit No. 29, which is a check dated March 5, 1940, a cashier's check, issued from the Farmers National Bank of Mullica Hill, New Jersey, made payable to A. L. Roberts, and direct your attention to the endorsement thereon, and I will ask you if you know whose handwriting is on there, the endorsement "A. L. Roberts?"

A. I don't.

Q. Incidentally, while I have that Exhibit No.



(Testimony of Jacob Morris Danziger.)

17, there is a photostat here of a group of—I think it is six money orders. Take a look at it. Those bottom ones are from Hazelton to Carlton in New York.

A. I have looked them all over, if that is what you wanted me to do, Mr. Rose.

Q. Did you cause to be transmitted to George Carlton, the person to whom these several money orders are payable, as shown by Exhibit 17, the amounts reflected in these respective six U. S. Postal money orders emanating from Los Angeles as reflected by Exhibit 17?

A. Well, I can't tell from them, Mr. Rose. I can't tell from those. I did send him some money orders transmitted in the name of "A. Levy," my brother-in-law, and I [1471] don't know whether these are the orders that fit into them or not. There is nothing on them that gives me that cue.

Q. There is a collateral document to this.

Mr. Rose: Do you have it, Mr. Frankenburg?

Mr. Lucas: Exhibit 16, I think, is what you want.

Q. By Mr. Rose: We have here as Exhibit 16 certain applications, and I will ask you to examine that and state whether those are in your handwriting?

A. Yes, sir, they are all in my handwriting.

Q. At the time that you made and caused to be made these respective applications for transmittal of money, as reflected in Exhibit 16, did you have any knowledge that the persons to whom these

(Testimony of Jacob Morris Danziger.)

transmittals were to go, was the person who appeared in these proceedings as Mr. Warren?

A. No, I didn't know that Mr. Carlton was Mr. Warren, or vice versa.

Q. So far as you knew, was there a George Carlton, as distinguished from the gentleman here under the name of Warren, Carter, Carmen, et cetera?

A. There was; and I had considerable correspondence with him.

Q. That brings to mind—what was the occasion, Mr. Danziger, for the resort to the use of the name of your brother-in-law as distinguished from any other?

A. Mr. Carlton had said in sending him some money he didn't wish it to come from the Wake Development Company, and [1472] I sent it in this form to meet that view.

Q. Did you have any intention in causing the money to go through the postal process under the name of your brother-in-law as distinguished from any other? Did you utilize that for the purpose, or with any belief that you were defrauding anyone?

A. No; and I don't know how it did defraud anyone.

Q. Now, we come to Mr. McCoy. Do you remember Mr. McCoy being here?

A. Yes, very well, Mr. Rose.

Q. Now, in connection with the transaction with Mr. McCoy, other than as reflected by the file that is an exhibit in this case, of the Wake Development

(Testimony of Jacob Morris Danziger.)

Company, did you have any knowledge of the identity of the person or persons who called on Mr. McCoy?

A. Well, I have acquired some knowledge from some proceedings here, and from some thing that Mr. Mainland told me.

Q. Well, I haven't got that in mind. I am relegating this inquest to the times surrounding the occasion of the transaction.

A. I had no knowledge of who had seen him, other than what he told me.

Q. Did you know what representations had been made to Mr. McCoy by the person or persons calling on him?

A. Not until Mr. McCoy wrote me and told me something about it. [1473]

Q. Had you at any time authorized such representations to be made? A. I had not.

Q. Prior to these advices being transmitted to you in the course of mail from Mr. McCoy, as established here by his oral testimony and by the documents now in evidence, did you have any knowledge of what representations had been made?

A. I had not.

Q. Did you know that a Mr. O'Brien, at least that is the testimony here, that a Mr. O'Brien had called on him?

A. I never heard the name of Mr. O'Brien until I got in this court room in connection with any of these affairs, Mr. Rose.

Q. Did you know who the person referred to in

(Testimony of Jacob Morris Danziger.)

this transaction, who has been identified here as A. L. Baker, was?

A. I didn't know it at that time.

Q. I think Mr. McCoy mentioned that a Mr. Winslow was supposed to be the person located here in Los Angeles who was in on this supposed deal. To your knowledge was Mr. Winslow ever out here?

A. I never knew him to be here, and I never met him here. I met him but the once, on two occasions practically at the same time, when I returned from Europe. I never knew him at any time to be here.

Q. So far as you knew, at all times, other than such information that has been conveyed here in the course of the testimony, what connection did you understand Mr. Winslow to have, if any?

A. Mr. Winslow told me, and Mr. Carmen told me, that Mr. Winslow was taking over the Great Eastern deal in, I think it was in September, 1937, when I returned to New York, on the occasion that I met the man.

Q. That gives me an opportunity for once to clear up these dates. I see your passport here. You just told us you returned in September 1937. Let's get the dates when you left for England, and let's get when you returned, so we will have it definitely in the record.

A. This passport won't show when I left for England, but it shows when I got to Southampton.

Q. What is that date?

A. September 19, 1935.



(Testimony of Jacob Morris Danziger.)

Q. Tell us when the passport reflects your return?

A. It reflects my arrival on the City of Norfolk, that is the name of the ship, July 22, 1937.

Q. Where at?

A. Well, it just says U. S. Immigration Department of Labor. I know where it was but I don't think this reflects it. The ship landed at Baltimore.

This British alien registration thing says that I left Southampton for the United States on the 12th day of the 7th [1475] month. That is July 12, 1937.

Q. So far as you know, the records reflected in that passport and document are accurate?

A. They are accurate and my memory is not.

Q. I do not want to burden his Honor with the detail of taking out all these communications. You are familiar, in general, are you, with the various documents that have found their way into evidence here in the course of these proceedings that bear your signature?

A. Yes, I am. I have seen them all, and I gave them all to Mr. Mainland, I think.

Q. Now, at the time that those respective documents, and each of them—if there is any exception, I want you to specify it if you have any in mind—at the time these communications were caused to be written and transcribed and that matter transmitted, were any of the declarations or statements made by you in any of those documents, over your signature, made with any reservation or with any purpose of deception, or with the intention of misleading the

(Testimony of Jacob Morris Danziger.)

person to whom it was addressed or by whom it was received?

A. They were not; and I think every statement that I have ever put my name to was fully true and correct.

Q. You have read this indictment, haven't you?

A. No, I can't say that I read it all, Mr. Rose. I scanned it at one time.

Q. It is a little embarrassing to me, because I wanted [1476] to follow the form of addressing——

A. I will read it if you wish me to.

Mr. Rose: I wish to apologize to your Honor. There has been a maze of documents here that have been transmitted to me, and your Honor is familiar with the difficulties, as you indicated, of a man in private practice. Frankly, I was injected into this trial with no belief, honestly, in my mind, that I was going to go ahead as fast as I have been obliged to, and I find a lot of communications, which I think are vital and significant, which should properly be fore this court in consideration of this matter. As your Honor knows, in private practice I have a deadline on briefs, and I have records to read. And as your Honor probably surmizes, I am a pretty busy lawyer, you might say; I haven't handled very many criminal cases in the last number of years, but I have some very extensive matters in the office arising out of civil proceedings. One case on which I am handling an appeal has a record of 80 odd volumes, and they are very reluctant, under the present system and practice here, to give you very

(Testimony of Jacob Morris Danziger.)

many extensions. They hold that a lawyer being busy is no excuse. Perhaps it isn't, but I find myself here, by the turn of events, having this situation: I have a client here who hasn't even read the indictment, and I think he should so I could cover the field by referring to each and every count. He ought to know about it. And I would like to have an opportunity, before I finish my examination in chief of this [1477] witness, to have a chance to canvass a lot of this British material, and other material that pertains to this matter, so I can, if I feel it should be before your Honor for consideration, present it as part of my case.

The Court: I think the only way you could do that, thinking of the time element as it affects everybody, including myself, would be for you to permit Mr. Lucas to cross examine on your case in chief so far, with the privilege to you, on your re-direct, to go into new matter if your final study of your documentary data makes you think it is necessary.

Mr. Rose: I was going to ask your Honor if you would permit that form of proceeding. I think it is more expeditious to all concerned, even to Mr. Lucas, to have the whole matter before us.

The Court: I don't know whether it is fair or satisfactory to Mr. Lucas, but I am going to ask his cooperation.

Mr. Lucas: I will be very glad to consent to that, your Honor.

The Court: I take it the cross examination of

(Testimony of Jacob Morris Danziger.)

Mr. Danziger may begin now on the matters you have covered?

Mr. Rose: That is correct.

The Court: You may start that at 11 o'clock, Mr. Lucas.

(A recess was taken.) [1478]

### Cross Examination

By Mr. Lucas:

Q. Mr. Danziger——

The Court: If Mr. Danziger prefers to answer questions in that direction (indicating) so he may be in a sense addressing me, I think you should accord him the privilege. He objects to the questioning from there.

Mr. Lucas: The only think I moved over here for——

The Court: The other reason is the more important. Mr. Rose, does your client prefer to be examined in this direction (indicating)?

Mr. Rose: No. He simply made the observation to me that he doesn't like to have his back to your Honor, and he said that is in effect what was happening if I examined from that end. If your Honor doesn't mind, he could examine from any point he likes.

Mr. Lucas: Thank you.

Q. By Mr. Lucas: Mr. Danziger, in your direct testimony here you have from time to time used the expression "Mr. Hill who was one of the owners of the properties," and I would ask you if by that



(Testimony of Jacob Morris Danziger.)

expression you mean that he was one of the owners of the fee title to the property.

A. He was one of the owners of the fee title to the great bulk of the properties. I think there were some parcels where the fee ownership might have been in some others who, in turn, had leased it to Hill. Hill and his [1479] partners had organized a partnership called Trinidad Mineral Claims. Whether it was Trinidad Mineral Claims Company or not, I don't know; but you will pick it up in the Standard Mining contract some place.

Q. Well, in your testimony to Mr. Mainland you had referred to 200 different owners?

A. No, I referred to 200 different parcels.

Q. 200 different parcels? A. Yes.

Q. Not 200 different owners?

A. Of course not.

Q. Then, how much of this land was owned by a Mr. Hill?

A. Well, Mr. Hill and his two partners, Gasken and Allahar, either owned the fee or the oil rights on every one of the 200 parcels.

Q. That is what I am trying to find out. What did they own?

A. They own either the fee or the oil rights on the whole 200 different parcels.

Q. In your testimony before Mr. Mainland you said as follows: "The oil rights were owned by three persons in Trinidad; one Thomas Hill, one W. A. Gasken, and one Allahar?"

A. That is what I am saying now.

(Testimony of Jacob Morris Danziger.)

Q. Did they own the oil rights or the fee title?

A. They owned—if they owned the fee they owned the [1480] oil, and if they owned the oil rights they owned the oil rights. There are a few of the parcels that they leased from others that owned the fee, but they owned the oil rights where they own the fee, and they owned the oil rights on the land leased from others to them.

Q. Can you tell me substantially how much of the total acreage did Mr. Hill own the fee title?

A. I can't tell you, but I think a large portion of it.

Q. Well, I direct your attention now to your testimony on page 3 of the transcript, which is an exhibit in evidence here, where you said as follows:

“The oil rights were owned by three persons in Trinidad, one Thomas Hill, one W. A. Gaskin, and one Allahar. They in turn had made a lease contract with a concern called Standard Mining Company, a New York corporation, that was controlled by Hill?”

A. That is correct.

Q. That is correct? A. Yes.

Q. Is it your contention now definitely that Hill owned fee rights to some extent?

A. It isn't my contention; it is a statement of fact, Mr. Lucas.

Q. That is what I am getting at. There were not 200 different owners? [1481]

A. There were 200 different parcels. Hill, Gaskin and Allahar had acquired either the oil rights

(Testimony of Jacob Morris Danziger.)

or the fee on 200 different parcels from a great number of different owners.

Q. All right. I direct your attention to the testimony you gave Mr. Mainland where you said on page 4 of that transcript, in response to this question:

“Q. What documentary evidence of the interest in these leases did Trinidad acquire?

“A. Well, they acquired or received the original recorded oil right documents from it, from 200 owners of 200 different parcels of ground.”

Mr. Rose: Just a minute, Mr. Danziger. Your Honor, I am disposed not to resort to any objections, because I am not the least bit alarmed that your Honor is going to pay any attention to any incompetent evidence, but I think on this one point I want to interject the objection, and I do make the objection that it is argumentative and has been asked and answered.

The Court: Continue the examination.

Mr. Lucas: Read the question, Mr. Reporter.

The Court: Don't read it. Repeat it and make it as short as you can. You are asking him an impeaching question.

Q. By Mr. Lucas: I will read you your question and answer again.

“Q. What documentary evidence of the interest in [1482] these leases did Trinidad acquire?

“A. Well, they acquired or received the original recorded oil right documents from it, from 200 owners of 200 different parcels of ground.”

(Testimony of Jacob Morris Danziger.)

Is that statement true?

A. It is not true if it is to be literally interpreted that there were 200 different owners to 200 different parcels, because I am quite sure that some of those parcels, more than one, were owned by some of the individuals.

Q. Do you contend now that Hill by any deed or conveyance of any character conveyed to the Standard Mining Company any fee title to the property?

A. Mr. Hill didn't convey anything by himself to the Standard Mining Company. The contract is a lease from Hill, Gaskin and Allahar, doing business as the Trinidad Mineral Claims. It is a lease to the Standard Mining Company, which company was a creation of Mr. Hill's.

Q. What basis did Hill, Gaskin and Allahar have for the assignment or making of that contract or lease?

A. They owned the oil rights or the fee rights to every one of the parcels.

Q. Then, when you testified here yesterday as follows, "Mr. Hill was one of the owners of the properties," that was not literally true, was it?

A. It was literally true.

Q. He was a part owner, wasn't he? [1483]

A. He was one of the owners of the property.

Q. All right. Did you ever see or personally examine any conveyance to Mr. Hill?

A. My office, Mr. Andrews, examined every one of the deeds of conveyance of oil rights or fee to



(Testimony of Jacob Morris Danziger.)

Mr. Hill, Mr. Gaskin and Mr. Allahar, and the report that I gave you this morning or I gave to Mr. Rose, which has gone in evidence, is his report on that examination.

Mr. Lucas: May I have Exhibit CC?

Q. By Mr. Lucas: I think you referred to this as a title report or having something to do with the title, showing the title to these separate parcels of land?

A. That is the report that Mr. Andrews made to me after he had examined the title to all of these properties.

Q. You referred to this as a title report, didn't you?

A. Well, you can call it a title report. I don't know how I referred to it. I am telling you what it is.

Q. All right. I will ask you to examine the document, if you have not already done so and are not familiar with it——

A. I have done so. I read it this morning.

Q. ——and point out to me where the name of Hill occurs either as an owner or a grantor.

A. If it doesn't occur there it would be obvious to you. He says, Mr. Andrews said: "I have made up a schedule from the three books of deeds to the Trinidad properties [1484] which you got from Hill containing all of the important matter shown in the deeds, and sufficient description so that the property can be identified for mapping and other purposes. This schedule has been made so that I won't have

(Testimony of Jacob Morris Danziger.)

to take with me by air the three heavy books of deeds. Apparently all of the deeds for the leased properties attached to the copy of the lease which you recently sent me from London contains several items for which there are no deeds. The chief one of which is a 505 acre tract secured from William Aubry Gaskin.

“We have ordered for you a large scale map of Trinidad on which you can probably more closely locate the leased lands from the information below. All of the lands for which we have deeds are in two wards—about the south central portion of the west side of the island, namely, Montserrat and Savannah Grande North. One portion of——”

Q. I dislike to interrupt you. I didn't ask you to read the document.

A. Ask your question again.

Q. I dislike to interrupt you, but I asked you if there was any place in there where Hill was listed as a fee owner.

A. I don't think anybody is listed as anything in there, Mr. Lucas. The thing speaks for itself.

Q. I quite agree with you. As I understand your basis for any asserted right by Trinidad International Petroleum [1485] is founded upon a contract between Hill, Gaskin and Allahar with the Standard Mining Company?

A. The rights are founded on an assignment of the Standard Mining Company rights under that contract made with Hill, Gaskin and Allahar, and

(Testimony of Jacob Morris Danziger.)

I think the Trinidad Mineral Claims, that partnership figures in it.

Q. In other words, from a legal standpoint the title of Trinidad has no higher source than the contract between Hill, Gaskin and Allahar with the Standard Mining?

A. That is correct, all they have is the assignment of that contract.

Q. In your testimony just recently concluded you said that there was a George Carlton to whom you remitted this money?

A. There was so far as I knew.

Q. Well, did you ever meet him? A. No.

Q. What was the extent of your acquaintance with him?

A. Why, he apparently wrote in as one of the Great Eastern salesmen or sales managers, or what not, I don't know; I never saw him.

Q. How do you know he was in existence, then?

A. Only because he apparently told me so by writing to me.

Q. Did you have any understanding with Carlton as to the payment and the amount thereof by you for any services [1486] he might render in the way of selling stock?

A. Yes, I had some arrangement with him as to what he was to get out of the sales or what we were to get out of the sales.

Q. Can you refer me to any piece of documentary evidence in the record that will reflect what the terms of that arrangement were?

(Testimony of Jacob Morris Danziger.)

A. Well, I presume that you can take a sale to somebody that brought in a certain amount of money and then a payment to Carlton of a certain amount of money, and correlate them and figure out what the basis is. That is the only evidence that I can point to for you.

Q. Can you take those exhibits, 16 and 17 in evidence, where you remitted him money, and correlate them with any sale that Carlton made?

A. I am not a correlator and I am not an accountant, and I can't do that, Mr. Lucas.

Q. All right. With respect to the matter of the codes Mr. Rose asked you about, you said that the code arrangement was something that was worked out between Mrs. Faulkner, your sister, and Carter while you were in Europe, is that your knowledge and recollection of it?

A. That is my best recollection of it.

Q. What did you learn about it when you came back from Europe?

A. I didn't learn anything about it. I saw it on some [1487] of the documents that were handed over to Mr. Mainland, and it was obvious to me that it was some kind of a code.

Q. Did you ask your sister about it when you came back from England?

A. No, I didn't ask her anything about it.

Q. Did you discuss it with her in any way?

A. Not to my knowledge.

Q. Do you know whether or not the code was



(Testimony of Jacob Morris Danziger.)

continued to be used by your sister from the time you came back from England and up to her death?

A. I see the code letters on some portions of the correspondence in the company files which I turned over to Mr. Mainland, and I don't have any recollection of having seen those files until I turned them over to him, after I turned them over to him, as a matter of fact, and I see what is apparently a code in her handwriting down in the corner, there are a lot of letters, and that is the first evidence that I saw that they had a code.

Q. And when you saw that you made no inquiry about it? A. No, I had no occasion to.

Q. All right.

A. My sister had been dead a couple of years at that time.

Q. Well, didn't you learn of this between 1937 and 1939?

A. No, I didn't learn of it to my memory until I saw [1488] it on some of this stuff that I handed over to Mr. Mainland when I handed him my files.

Q. The date of your sister's death was some time in September, 1939, wasn't it?

A. That is correct.

Q. And do you recall any indication on any of this correspondence of a code after 1939?

A. Well, I don't remember, Mr. Lucas, of any. If you show me some I will tell you very quickly.

Q. Did you yourself use the code in any of your correspondence with reference to Wake or Trinidad business?

(Testimony of Jacob Morris Danziger.)

A. I don't have any impression or memory of ever having used the code.

Q. Well, would you say you didn't?

A. I won't say any more than that. I have no memory or impression of having done so.

Q. Mr. Danziger, in Mr. Rose's direct examination you said that your views with respect to sales of Trinidad stock by Wake varied from time to time, depending upon the situation in England with respect to the imminence of some deal that would raise money for drilling. Am I right in that?      A. I so stated.

Q. In other words, I take it that if the news in England or your correspondence with England indicated that a deal was about to be consummated whereby money would accrue to Trinidad, that you then weren't so anxious to make sales [1489] of stock?

A. Well, depending a good deal upon my own financial circumstances at the moment, too.

Q. Isn't that what you meant when you said that you didn't want to make sales when the news was good?

A. Well, I said what I meant, Mr. Lucas, if that is what you are asking me.

Q. Tell me about it again. I haven't a transcript in front of me.

A. My appraisal of the market value of the stock would fluctuate. Before I had a deal to get the properties developed and I was just working on one, my appraisal of the value of that stock

(Testimony of Jacob Morris Danziger.)

was a good deal less than when I had made a deal. I would be willing to sell some stock at times, I would have sold some stock at one time to get some very necessary transportation money at a great deal less price than I would have sold it for two or three weeks after that when the company was fully financed.

Q. Well, as a matter of fact, weren't you always willing at any time to sell out to the public or to anybody who would buy it the entire 165,000 shares of Trinidad stock that was owned by Wake?

A. No, sir, I never was willing to sell over 20,000 shares that I made the original deal with with Mr. Carmen and the Great Eastern Company.

Q. You never were willing to sell—— [1490]

A. I was not, and I never attempted to sell it.

Q. Do you not remember in some of this correspondence there is a statement in writing over your signature that you understood that the offer of the rights to the Great Eastern people were to be made to every Great Eastern stockholder?

A. No, my memory is just directly to the contrary, that I said any time I was asked concerning it, that the rights were not being extended to anything over the stockholders who would absorb 20,000 shares. That was the limitation of the contract that I made with them, and you will find, Mr. Lucas, if you look for it, something in the correspondence to the effect that the right was not offered to all of the Great Eastern stockholders.

Q. I will ask you what you meant by this

(Testimony of Jacob Morris Danziger.)

answer when you were being interrogated by Mr. Mainland under oath. I refer to page 61 of the transcript:

“Q. And he never commented that it was next to impossible to purchase Trinidad stock or notes because there was none offered?

“A. Not to me and I don’t think to anybody else.

“Q. As a matter of fact, there would be a plentiful supply if anybody wanted it, would there not?

“A. If they sought me or came in contact with me or Wake Development Company in any fashion there was a supply available up to the amount of our holdings.”

What did you mean by that answer? [1491]

A. Well, I presume just what I said, Mr. Lucas.

Q. Well, reconcile that for me, please, with your statement a moment ago that you would not at any time sell more than 20,000 shares?

A. Well, there was no time that I entered into or that I was willing to enter into a contract with anybody to sell more than 20,000 shares of that stock.

Q. I direct your attention to Government’s Exhibit 54 in evidence, and I direct your attention to the first yellow sheet of that exhibit on the reverse side, under date of February 14, 1938, you were back from England at that time, were you not?

A. I came back in 1937.

Q. This offer was supposed to have been made



(Testimony of Jacob Morris Danziger.)

to every stockholder of Great Eastern Natural Gas, and a right certificate was issued to those who wished to exchange at that time?

A. I presume that the Great Eastern Company made an offer to all of their stockholders, but they only had under contract 20,000 shares which they could offer to their stockholders, and I understand their stockholders were a million and a half or two million shares, and they didn't have available under any contract with me stock to offer to all of their stockholders, but they probably figured that they would offer to all of their stockholders and but a small portion of them would accept it.

Q. After this episode with Mrs. Pierce when you contend you told them—and I mean by “them” Great Eastern—that they were in default, you continued to sell after that, didn't you?

A. Mr. Lucas, on an arrangement I made with Mr. Carmen I let him go on selling to his Great Eastern stockholders under the arrangement that I had made for 20,000 shares, but a very small portion of which had been exhausted.

Q. I show you, after having first exhibited to Mr. Rose——

Mr. Rose: Is it in evidence?

Mr. Lucas: No; it is something not in evidence.

Mr. Rose: This hasn't been referred to before, has it?

Mr. Lucas: No, it has not.

Mr. Rose: Go ahead.

Q. By Mr. Lucas: I show you a yellow second

(Testimony of Jacob Morris Danziger.)

sheet of paper without any date on it, at the top is the salutation "Dear Madam", and I direct your attention to the handwriting below the typed portion of the letter, and ask you if the handwriting is your own.

A. The handwriting is my own. I am trying to read it myself right now.

Q. All right. Without regard to what the handwriting below says——

A. If that is all you are asking me, it is my handwriting. [1493]

Q. All right. I direct your attention to the left-hand margin of the document, and we have some figures there or letters, figures and letters, "KAAM—3/22/" with a notation "Air", and ask you if those letters in red ink "KAAM—3/22/" were on there when you put the handwriting on the document.

A. I don't know. They are in my sister's handwriting. I don't know when she put them on.

Mr. Lucas: We offer this in evidence as government's exhibit next in order, if the Court please.

Mr. Rose: The only objection I have to it, if the Court please, is there is no foundation laid as to the date.

I will withdraw the objection and let it go in.

The Court: Admitted.

The Clerk: 114.

(The document referred to was marked as Government's Exhibit 114, and was received in evidence.)

(Testimony of Jacob Morris Danziger.)

Mr. Rose: Is there a date on it, Mr. Danziger?

Mr. Lucas: I see no date on it at all.

Mr. Rose: Yes, as I remember, there is a date, "March 20, 1939".

Mr. Lucas: On the reverse side.

Mr. Rose: It is part of the document.

Mr. Lucas: I offer the entire document.

Q. By Mr. Lucas: Mr. Danziger, you testified, I believe, yesterday that at no time after you saw Mr. Carter [1494] in New York in 1937 when you returned from Europe did you thereafter communicate with him or see him in any way to your knowledge; is that right?

A. I never have seen him. I saw him in the court room, and I never communicated with him knowing that he was Mr. Carter or Mr. Carmen.

Q. In other words, your statement is now that you never knowingly and to your knowledge, after you left New York to come to California in 1937, thereafter communicated with Mr. Carter?

A. Knowing him to be——

Q. Knowing him to be Carter?

A. Well, some time after Mr. Mainland came into this picture and told me some things I communicated with him with a very strong suspicion that he was somebody other than he was.

Q. Well, now, how did you acquire his address? You didn't get it from Mr. Mainland, did you?

A. I must have gotten addresses from Carlton or somebody, because I had no permanent address for the man I was communicating with.

(Testimony of Jacob Morris Danziger.)

Q. All right. When, approximately, did you first communicate with him knowing him to be Carter or having a strong suspicion that he was Carter?

A. Well, I think I communicated with him shortly after Mr. Mainland's first visit to my office some many [1495] months before the formal testimony was taken which has been read into evidence here.

Q. Well, that would be during the year of 1941, would it not?

A. Well, I just won't try to carry that along. You can figure it out for yourself. I am not going to tell you what year it was.

Q. Well, it was some time before, you say, the formal testimony was taken?

A. Yes, Mr. Mainland came to me and interviewed me over a long period of time, a great number of conferences, and then finally said, "Come on down, we want your formal testimony", and gave me a formal subpoena, and we went on down. But in the meantime he had had all my files and all the information that I had given him over a period of a good many months before that.

Q. Yes, but do you contend that you received Carter's address from Mr. Mainland?

A. No, I never got any address from Mr. Mainland. Mainland was trying to get me to give him Carter's address.

Q. All right. Can you give us your best recollection from whom you did get it?



(Testimony of Jacob Morris Danziger.)

A. I don't know where it came from.

Q. You haven't any idea?

A. I don't know that it was Carter's address.

Q. Did you ever have a suspicion that he got the mail [1496] you sent him?

A. Oh, some mail that I have written to him since the indictment and possibly some after Mr. Mainland's first visit there I had every reason to believe that he got it.

Q. Well, did you ever knowingly communicate with him before the indictment and after you left New York?

A. Yes, I communicated with whom I suspected was Carter.

Q. And what was the basis of your suspicion?

A. What Mr. Mainland told me.

Q. And, is it your testimony now that you never knowingly communicated with Carter knowing him to be Carter, up until the time Mainland first interviewed you?

A. That is my impression, Mr. Lucas.

Q. Is that your best recollection?

A. That is.

Q. All right. I refer you to Governmnet's Exhibit 96, in evidence, being a letter starting out, "Dear Friend:" and signed by the initials "JM".

A. Let me see it, will you, Mr. Lucas?

Q. Yes. I want to give it a little further reading myself before I give it to you, and I ask you if that was a letter which you addressed to Carter knowing him to be Carter.

(Testimony of Jacob Morris Danziger.)

A. Well, at this time——

Q. First please answer the question. [1497]

A. I can't answer it literally. Ask it again.

Q. Did you write that to Carter——

A. I wrote this.

Q. ——knowing him to be Carter?

A. I wrote this letter and I had at that time a very strong suspicion that the man I was writing to was Carter.

Q. What was the occasion of writing that letter to Carter?

A. Well, I presume I wished to communicate the contents of it to him.

Q. Do you recall where you addressed it?

A. No.

Q. All right. Why didn't you address him as "Dear Carter" or "Carmen" or "Cameron"?

A. I don't know why. I don't know why I didn't address him in some other fashion.

Q. All right. I will ask you if this is true: "Dear Friend: I received a note from you some weeks ago", is that true?

A. I am sure it was, or I wouldn't have stated so.

Q. Do you recall now how he signed it?

A. No.

Q. "It is nice to know that you are apparently alive and going strong"; he had told you he was moving around, did he?

A. He must have, or I wouldn't have made that comment. [1498]

(Testimony of Jacob Morris Danziger.)

Q. You said to him as follows: "At the moment I am working out my oil venture in Sicily". Was that true? A. It was.

Q. "Have a fine independent oil company ready able and willing to go into development so soon as we can iron out some of the diplomatic angles;" is that true? A. It is and was.

Q. Were you looking forward to using Carter's services in connection with that fine oil development? A. No.

Q. You said as follows: "Incidentally a friend in London has a deal on to take over our TIP land in Trinidad and give them a whirl." Who was that friend in London?

A. Mr. Sutherland.

Q. "whereby the TIP Company will have a substantial interest"; was that true?

A. It was.

Q. Now, "Never a word on the SEC matter". What did you mean by that?

A. At that time I take it that the indictment had been handed down for some long period of time and that I am telling him that nothing—whatever the language is it speaks for itself.

Q. You wrote to him that business with regard to the SEC knowing that he was indicted along with you here? A. Yes. [1499]

Q. And you sought that means of conveying information to him about the pendency and status of this present proceeding before the Court?

(Testimony of Jacob Morris Danziger.)

A. That letter is obvious that I was informing him.

Q. Well, you see the letter isn't addressed to him, and it is written in a vein that isn't quite as obvious as you say it is. I am glad to hear you admit it. You said as follows:

"If you ever see C tell him for me that I hope that the bastards never catch up to him and that they abandon all hope in that direction if they have any"?

A. That letter wasn't written to him at all; it was written to somebody he told me to write to when I wanted to communicate with him.

Q. That is what I wanted to find out.

A. The contents tells me that.

Q. Do you now repudiate the statement you made a moment ago that you wrote it to Carter?

A. I didn't write it to him. It was written to somebody he told me to write him to get it to him. It is written in the third person.

Q. It is not so obvious, then, that this is a letter to Carter?

A. I don't wish to argue with you, Mr. Lucas. Ask me a question and I will answer it.

Q. Thank you, it is a point well taken. [1500]

Do you now say you wrote this to a third person and not Carter?

A. Yes.

Q. The only reason for that is the little reference I have just referred to here?

A. Yes. It states in there: tell your friend C. "C" is Mr. Carmen.



(Testimony of Jacob Morris Danziger.)

Q. There is no doubt about that in your mind, is there?      A. I am sure there isn't.

Q. All right. Now, "If you ever see C tell him for me that I hope that the bastards never catch up to him and that they abandon all hope in that direction if they have any. It must be tough on him to try and get by in his business with that thing hanging over him but I don't believe he is among those being sought for." Did you believe at that time they weren't seeking Carmen?

A. Yes, I meant just what I said there, and I believe just what I wrote.

Q. "He is small fry and if he is out of the security line there is no reason why he should be pursued." Did you believe that?      A. I did.

Q. "But tell him to please not let me know his whereabouts—I would not want to think that possibly something I had done innocently had hurt him any." Do you still [1501] contend you were writing this letter to a third person to communicate that information to Carter?

A. To tell it to him.

Q. You don't want to change your testimony that you wrote this——

Mr. Rose: Just a minute. I object to that as argumentative.

The Witness: I don't want to change my testimony at al, Mr. Lucas.

Mr. Rose: Just a moment. Opposing counsel may be encouraged by my silence. I don't want

(Testimony of Jacob Morris Danziger.)

to meddle with this thing, your Honor, but it is getting to a point——

The Court: I don't want you to meddle with it either. I am very much interested in this examination. Continue it.

Mr. Rose: Very well.

Q. By Mr. Lucas: "They once asked me during the investigation would I tell them his address if I got it and I said I would not." Is that literally true?

A. Yes, I told that to Mr. Mainland.

Q. Mainland asked you for Carter's address?

A. Yes.

Q. Did you know it at the time? A. No.

Q. If you had known it you wouldn't have given it? A. I don't think I would have.

Q. But you say here, "They once asked me during the [1502] investigation would I tell them his address"; did Mainland ask you?

A. Mr. Mainland asked me if I know his address would I tell him, and I told him no. Then he asked me, "If you hear from him any time giving you any place to reply to him, will you telephone me and let me know?" And I said, "No, I am not an informer."

Q. Didn't you tell Mainland in the course of this written examination that you had never seen Carmen or Carter or communicated with him directly or indirectly at any time during the period from 1937 until the time you were being examined?

A. Knowing that he was Carter, I did say that.

(Testimony of Jacob Morris Danziger.)

Q. That's right.

A. This letter is written two or three years after that.

Q. This letter is written after the time Mainland——

A. This is written two years after the indictment, Mr. Lucas.

Q. Yes, that's right. This letter was probably written in 1943 or '44, wasn't it?

A. When was the indictment?

Q. 1941.

A. This letter was written at such a time that in my mind they were not doing anything with it, a long time had elapsed and I tell him so there.

Q. You say you tell him so. And isn't it a fact that [1503] you were telling this to Carter?

A. I was telling it to the person that he told me to write to to convey it to him.

Q. Have you got a scrap of correspondence in any way that will indicate to you now the person to whom this was addressed?

A. He gave me some address—well, I think he used the address here in the court room and said it was his mother's place, some place in New York.

Q. All right. Is that the address that you wrote this communication to?

A. It is my guess, Mr. Lucas. I don't know where I mailed that document to, that letter to.

Q. Was that the address of Carter or was it the address of the person to whom you wrote the letter?

(Testimony of Jacob Morris Danziger.)

A. So far as I know it wasn't Carter's address. I never knew an address for him.

Q. All right. Did you know this man at all whose name Carter gave you to write to?

A. No; it was some friend of his.

Q. Some friend of his?

A. I am not sure it was a man. My impression is that it was Willis, Mrs. Willis, something of that character. I am only speaking from an impression. I haven't it down any place, and it isn't apparently on that letter.

Q. Why did you tell the person to whom you wrote this [1504] letter as follows: "They set out to mess me up and they did that plenty"?

A. Why did I say that?

Q. Yes, to this stranger.

A. It wasn't a stranger. I was talking to a person and told them to tell Carter something, or Carmen.

Q. That doesn't appear here.

A. Well, I think the context of the letter there says, "If you ever see C tell him," and then what follows is what to tell him.

Q. You said as follows, in a separate paragraph totally unrelated to that paragraph, "If you ever see C," you say as follows in the closing paragraph: "My best for the holidays." Was that addressed to this stranger whose name was given you by Carter?

A. No; all of it was intended to be conveyed



(Testimony of Jacob Morris Danziger.)

to Mr. Carter, according to the context of the letter, Mr. Lucas.

Q. You said: "Should any of my affairs take me east I will write you." Was that to this friend whose name Carter gave you?

A. Well, I don't know whether I would have written to that friend or if I would have had an address of Carter I would have written to him.

Q. What did you mean by that statement?

A. Just what I said.

Q. That you would call upon this friend if your [1505] affairs took you east, or that you would write that friend?

A. No; what I intended to do was to get in touch with Mr. Carmen or Carter, if my affairs took me east.

Q. "There is always a chance I may have to fly to Italy". Were you telling that to the friend to tell Carter, or were you telling that just to the friend?

A. I wasn't telling anything to the friend. I didn't even know the friend.

Q. "Regards and all good wishes." Was that for Carmen or the friend?

A. It was intended for Mr. Carmen.

Q. In Exhibit 105 there is a letter on the stationery of the Park Lane Hotel, 1st of July, addressed to "My Dear 'Old Timer'".

The Court: What year?

Mr. Lucas: This letter that I read from does not contain a year date, but it refers to a letter,

(Testimony of Jacob Morris Danziger.)

and there is an accompanying letter in the exhibit for 1937.

Q. By Mr. Lucas: You wrote this letter? Pardon me if I assume you are too familiar with it. I am sorry, Mr. Danziger.

A. I haven't looked at it. Maybe I saw it here the other day, I am not sure.

Q. You wrote that letter, didn't you, to Carter?

A. No, I didn't write it to Carter.

Q. You didn't Who did you write it to? [1506]

A. Just let me read it first.

Q. Yes, I will be happy to, I don't want to disturb you or hurry you.

A. My impression is that it was written to Carlton.

Q. Carlton? A. To Carlton.

Q. Did you have any correspondence with Carlton while you were in Europe?

A. Yes, I think I did have, either had it or my sister wrote me something concerning it.

Q. Do you recall where you addressed this letter to Carlton to? A. No.

Q. Were you very intimate with this fellow Carlton?

A. Not at that time. I ultimately became better acquainted with him.

Q. Did you ever meet him prior to this letter?

A. No.

Q. You said awhile ago you never met him, didn't you?

A. If I said that awhile ago, it is perfectly true.

(Testimony of Jacob Morris Danziger.)

You asked me if I met him prior to that letter and I said no.

Q. Let's square it off——

A. I don't think I ever met him, in the light of certain circumstances that I learned here, why——

Q. This letter says: "My Dear 'Old Timer' "; did [1507] you know this chap Carlton well enough to address him that way?

A. No. But my impression is that my sister had written to me that some Mr. Carlton of the Great Eastern group had written in and called himself "Old Timer", I remember her commenting on it, that she thought it was a little fresh on the part of a salesman to address me that way after one or two communications, and she had evidently sent me something, because you will notice I have got "Old Timer" there in quotations. So it was some reference he made in something that came to me from the office.

Q. He called you Old Timer, and you called him Old Timer in addressing him?

A. That is obvious there.

Q. You said to Carlton as follows, "I am leaving here for New York on Baltimore Mail Line 'City of Norfolk' on July 12 and will be in New York on the 22nd. I may likely go to Barbizon-Plaza but am not yet certain though I will collect mail there if I don't go there." Had you had any prior correspondence with Carlton indicating that he was expecting your arrival in New York?

A. No, I don't think anybody was expecting my

(Testimony of Jacob Morris Danziger.)

arrival in New York. I didn't know myself that I was even going to be in New York until a very few days before I left.

Q. Did you have any correspondence with Carlton whereby he evinced any interest in your arrival in New York? [1508]

A. It must have been, Mr. Lucas.

Q. What is your best recollection on it?

A. Well, my best recollection is that there was some correspondence with Carlton.

Q. Now, "I want very much to see you—will not likely be in New York for a week—possibly I can personally help with Parsons—or anyone else. I would commit murder to get over a nice sale." Did you know then that Carlton was working on the Parsons deal?

A. No, I didn't, Mr. Lucas. My impression is that Mrs. Parsons had written in to the office and the letter had been sent to me, some disappointment in the handling of her stock, that whoever sold it to her had made, and I think I wrote her something on the subject some time, and my impression is that what I meant there was that I would help him explain the situation to her. I remember sending her from over there a copy of the Craig report.

Q. Well, didn't you then know that Carter was working on the Parsons deal?

A. You will have to differentiate as to whether it was Carter as Carter or Carter as Carmen or Carter as Carlton or something of that character, Mr.



(Testimony of Jacob Morris Danziger.)

Lucas. I don't want to be placed in the position, with my present knowledge that Mr. Carter was Carlton, because I heard him say so here in the the court room, I don't wish to be placed in the position of saying he was Mr. Carmen or somebody else at [1509] that time.

Q. Well, did you at that time repudiate that you didn't know—withdraw that.

At the time you wrote this letter just tell me candidly did you write this letter to Carter knowing him to be Carter?

A. I don't think that letter went to Carter. My impression is it went to Carlton.

Q. All right. Now, at that time did you have any suspicion that Carlton was Carter?

A. I don't know when I got the first suspicion, Mr. Lucas.

Q. Did you ever get it before you got in the court room?

A. Oh, yes. Mr. Mainland gave me a lot of information that gave me a pretty firm idea.

Q. You never had the slightest suspicion of it until Mainland talked to you about it, had you?

A. I won't say that, Mr. Lucas. I don't know when I got the first slight suspicion. I know that what Mr. Mainland told me gave me a stronger feeling than I might have had.

Q. Now, will you tell me why you said to Carlton as follows: "I would commit murder to get over a nice sale"?

A. Well, I told him that because I was having

(Testimony of Jacob Morris Danziger.)

real financial difficulties in keeping myself over there during the two years that I was there, and I was hanging on by my teeth to get to the point to close the deal for the company's [1510] finances, and I actually borrowed money to get home on, and I was anxious and desperate if I could get a sale through to solve that situation I would have been very, very happy to do it.

Q. Did you tell all that in this letter, or, I mean, did you imply all that in this statement, "I would commit murder" to a stranger, a man you never met?

A. I was talking to somebody that was selling Great Eastern stock, Mr. Lucas.

Q. Do you now assert and affirm that you did not know that you were writing this letter to Carter?

A. Well, I don't know. I can't take myself back to the day that I wrote that letter. My impression is that the first designation of anybody as "Old Timer" came from Carlton.

Q. Never Carter? Did you ever address Carter as "Old Timer"?

A. I don't think knowingly so.

Q. Well, I want your best judgment.

A. I didn't know that he was Carter at the time, I am quite satisfied of that, if I ever referred to him as that.

Q. Let's look at it even in the light of what you learned in this trial. Did you ever address Carter as "O.T."?

(Testimony of Jacob Morris Danziger.)

A. It is quite obvious that the man I addressed as "O. T." or "Old Timer" was Warren, because of what I heard [1511] him say in the court room.

Q. And from what you heard here it is quite obvious, isn't it?

A. From what I have learned here, yes.

Q. You are not relying in making that statement on just a mere sworn statement of Mr. Carter from the witness stand, are you?

A. Mr. Mainland gave me some very strong suspicions. He told me—wanted to know if I knew that Carmen had jumped his bail out in Chicago. I told him no. The last I heard of it when I met him in New York his case was pending on appeal, he told me that, and then he told me quite a number of things which he learned in his investigation, all of which pointed to Carmen or Carlton having been the same persons.

Q. Did you not deny on numerous occasions in the testimony before Mr. Mainland that you did not have the remotest idea of who "O. T." was?

A. I probably did. Whatever I said, I said, Mr. Lucas. And if you will produce it and read it to me I will confirm it to you.

Q. But independently of that, do you not remember that you denied who "O. T." was?

A. I denied knowing any salesman with the initials "O. T." I remember that very well, as I heard my testimony read here in the court. He was talking to me, [1512] trying to find out some salesman's name with the initials "O. T." And O. T. didn't

(Testimony of Jacob Morris Danziger.)

occur to me then as an abbreviation of "Old Timer". He didn't ask me about Old Timer. He asked me about a salesman whose initials were O. T., and at that time it didn't occur to me any such. I couldn't think of any name that had those initials, and I don't know.

Q. With reference to this man Carlton that you wrote this letter to, about which we have been discussing, why did you say, "I am sending this letter to Phila. and a duplicate to L. A. to send to you in case they have a better address."?

A. I registered a fact.

Q. Did you know at that time while you were in England that Carlton was acquainted and had connection with your Los Angeles office?

A. Yes, I knew that Carlton had.

Q. From whom did you receive that information? A. From my sister.

Q. And she had written to you about Carlton?

A. My impression is that she had written to me that a salesman named Carlton had greeted me as Old Timer or something of that character. That is my best memory of what I learned at that time.

Q. Didn't you know at that time when you came back from England that a man by the name of Edwards had been selling Mrs. Parsons? [1513]

A. No, I never knew that anybody named Edwards was selling Mrs. Parsons.

Q. Hadn't Mrs. Parsons written to you to that effect?

A. She has written, there is something in the



(Testimony of Jacob Morris Danziger.)

correspondence, where she mentioned that Mr. Edwards had—I don't know whether she said he sold her, my impression is he was trying to get some stock transferred that he had given to her, or hadn't gotten, she wrote something about Edwards, I heard it the other day.

Q. You undertook to write her?

A. I wrote Mrs. Parsons quite a number of letters, and I have seen them in evidence here, Mr. Lucas.

Q. All right. Who did you think was selling, actually contacting Mrs. Parsons in making this deal?

A. I don't know that I thought anything about it.

Q. Now, in view of the testimony you have stated as to your financial condition at the time when you returned from England, do you recall this letter, Mr. Danziger, that you wrote to Mrs. Parsons? I will ask you to refresh yourself on it again before I interrogate you about it.

A. I wrote this letter, if that is what you are asking me.

Q. On what basis did you make this assertion to Mrs. Parsons: "Dear Mrs. Parsons: It is pleasing to have advices from our California office to the effect that you have apparently added to your holdings in this company and [1514] I feel sure that your investment will prove very profitable."—You then, in using "company" meant——

A. Trinidad.

(Testimony of Jacob Morris Danziger.)

Mr. Rose: Excuse me. Mr. Lucas, is there a date on that?

Mr. Lucas: Yes; June 28, 1937.

The Witness: From London.

Q. By Mr. Lucas: "As you likely know——" I continue to read, Mr. Danziger —— "As you likely know I have, as president of the company, been in England for some time on business of the company and while I am not at liberty at the moment to give out any details, I can assure you that Trinidad and this company have a brilliant future"—— Did you believe that at the time?

A. I believed it and knew it.

Q. Had a brilliant future?

A. Yes, and it still has.

Q. At that moment?

A. At that moment it did have a very, very, decided one.

Q. What factor justified you in making that statement to her?

A. Now, that was written in when? June?

Q. Just before you left England, June 28.

A. I had just closed a transaction with the Anglo something, I can get it from a letter here, but it is [1515] Colonel Nicholson's company, where by they had agreed that they were going to furnish the company the money to drill five wells, which was what I had been trying to get all the time I was over there.

Q. You had just concluded a transaction?

A. Yes.

(Testimony of Jacob Morris Danziger.)

Q. Was the transaction in writing?

A. It was in confirmatory—yes, it was in writing in letters between the two of us.

Q. Just in the form of a letter?

A. It was in the form of a letter that had a binding effect as though it was 40 pages and had four seals on it.

Q. You are an attorney?           A. Yes.

Q. Will you tell me by what means you feel that a letter can be binding?

A. A letter written and accepted between two persons is binding.

Q. All right. Have you got a letter which confirms or conforms to what you say there?

A. Isn't it among these files here that Mr. Mainland has gotten from us?

Q. I don't know.

A. Well, look and see if it isn't there. If it isn't there, then I will find it. My impression is you have got all my files. [1516]

Q. You rely upon that letter in making this statement?

A. I rely upon the culmination of a series of negotiations that had been extending for a period of over a year, with a reputable banking brokerage house in London that I culminated within a very few days before I left London to come home to get things in order for the company to go to work.

Q. Was it in writing?

A. It was in writing.

Q. Where is it?

(Testimony of Jacob Morris Danziger.)

A. I am asking you if it isn't in Mr. Mainland's files of mine.

Q. Do you contend you gave Mr. Mainland any such a letter?

A. I gave Mr. Mainland all the files we had, Mr. Lucas, and if it isn't in those files I will hunt elsewhere to find it for you.

Q. I show you, after first having shown to counsel, the only letter that has been called to my attention, it is dated June 15, 1936, addressed to Trinidad International Petroleum Limited, 12 Bow Lane London and ask you if that perchance is this confirmatory letter about which you speak.

A. It is not.

Q. This refers to Trinidad business does it not?

A. Yes. This is the group that I dealt with when I first got over there. [1517]

Q. What became of that deal?

A. These people sold some different stockholders under this arrangement whose certificates and names appear in these stubs that are among the things that Mr. Mainland got from us.

Q. Do you refer to that 500 shares——

Mr. Rose: Just a moment, Mr. Lucas. Do you mind telling me from what source you got this letter?

Mr. Lucas: I will have to confer with Mr. Mainland. It was given to me.

Mr. Rose: Does it come from him?

Mr. Lucas: I just got it from him. It was just handed to me by him. I don't know its source. I am asking that it be marked.



(Testimony of Jacob Morris Danziger.)

Mr. Rose: I would like to see it.

The Witness: That is not the arrangement I am talking about that we completed just before I left. That is some time in '36?

Q. By Mr. Lucas: Right.

A. The arrangement I completed was completed within a very few days before I left London, which was in July 19—I better get that passport.

Q. '37?

A. '37. And that isn't the outfit at all. I can get the name of it. It is Anglo something. I call it Colonel Nicholson's firm. He is the man that I dealt with. [1518]

The Court: We will recess until 2:00.

Mr. Rose, should Mr. Lucas' cross examination be concluded this afternoon, it won't be possible to adjourn, then, to permit you to make the examination that you are talking about, so I will have to ask you to have the defendant read the indictment during the noon recess, and I will have to ask you also to prepare yourself on the further documents. In other words, the case must be pushed through to an early conclusion.

Mr. Lucas: I am perfectly willing to go ahead with my cross examination, but if Mr. Rose only has a half hour or so, or whatever it is, if it is possible after the noon recess for him to resume his direct examination I will be perfectly willing to defer my cross examination until a later time.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [1519]

Los Angeles, California

Friday, February 2, 1945, 2:00 p.m.

JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Lucas: The letter which I had just shown the witness, your Honor, and offered before the noon recess, I don't believe it was marked in evidence as an exhibit. I now re-offer it and ask that it be marked Government's Exhibit next in order.

The Court: It may be marked and admitted.

The Clerk: 115.

(The document referred to was marked as Government's Exhibit 115, and was received in evidence.)

Cross Examination—(Continued)

By Mr. Lucas:

Q. Now, Mr. Danziger, you remember this letter, you said, and testified to something about it.

A. You better let me look at it again. I don't recall it.

Q. Yes.

A. Well, I don't say that I remember the letter itself. I remember the people that we did this business with.

Q. They were the people, I think you said, that bought 500 shares, their names are on record in the books of the company? [1520]

(Testimony of Jacob Morris Danziger.)

A. Yes, they are the people that I first talked to when I got over to England.

Q. Well, bearing in mind that the testimony in the record is, according to Mr. Mainland, that the books of the Trinidad Company reflect only 500 some odd shares outstanding to English stockholders with addresses in England, would you say that those are the people who were sold as a result of this?

A. I don't think all the English stockholders were, Mr. Lucas, because—well, Mr. Hill had made some sales over there, I don't know whether they ever got on to our books as company sales or transfers or not. You see, he went over and took some stock books with him, he made some sales over there, delivered his own stock, and I don't know whether the names that you refer to as English stockholders included or excluded those names. But these people——

Mr. Rose: A little louder, Mr. Danziger, I can't hear you.

The Witness: These people Carrington Evans did make some sales under this option.

Q. Passing from that for the moment, I believe somewhere in your record your testimony is that your sister died on September 16, 1939, is that correct? A. September, '39, I remember.

Q. For the purpose of refreshing your recollection, [1521] wasn't it about the 16th of the month?

A. I don't have the faintest idea. Something

(Testimony of Jacob Morris Danziger.)

you may have may refresh me. She died in September, '39, that is my memory.

Q. I refer now, again, to Government's Exhibit 105, the letter that you wrote to Old Timer, in which you said, "I want very much to see you," and I will ask you if it isn't a fact that one of the reasons you wanted to see Carter when you returned from England was to talk over with him somewhat his conviction in the state courts of Illinois?

A. I don't think so. We did talk about it, but I don't think I had in mind that I was coming over and wanted to see him to talk about it.

Q. At any rate, you had been advised by both Carter and Mrs. Faulkner that he had been convicted in the courts of Illinois while you were over in England?

A. I am not so sure that I had been advised that he had been convicted or just that he had been in trouble, but I knew——

Mr. Rose: Mr. Danziger, get back to your old fire so I can hear you, put a little animation in what you are saying.

A. I don't know that I knew that he had been convicted. I won't say I didn't, but I knew he had been in some trouble in Chicago, because I had been so informed, I think, from my sister.

Q. And hadn't Carter himself written you to that effect? [1522]

A. He might have, I don't remember, Mr. Lucas.

Q. Then at any rate, when you met in the Bar-



(Testimony of Jacob Morris Danziger.)

bizon Plaza Hotel, or wherever it was in New York, you did discuss with him his conviction?

A. Yes, he showed me his brief on appeal.

Q. What did he tell you that he was convicted about?

Mr. Rose: Objected to as immaterial and irrelevant to these issues, your Honor.

Mr. Lucas: As long as their relationship continued for many years thereafter, I think it is quite material.

Mr. Rose: Counsel is adverting, apparently, by showing me this thing again, to an attempt to bring in the collateral matter—he is trying to clutter up the record with the appeal and the merits of the case back there——

The Court: Wait a minute, wait a minute. Objection sustained.

Q. By Mr. Lucas: Did he tell you this, that he had been convicted only of failing to register as a stock salesman?

A. That is the impression I have now, and I think that is the impression I had then.

Q. Did you have that impression after reading the brief?

A. I don't remember what impression I had after I read the brief, except I thought it was a rotten brief, [1523] and I have in mind why I thought so.

Q. Without regard to the merits or demerits of the brief, what did you learn as a result of reading

(Testimony of Jacob Morris Danziger.)

the brief as to the nature of the charge that Carter was convicted of?

Mr. Rose: Objected to as immaterial.

The Court: Sustained. I am not interested in that.

Mr. Lucas: Very well, your Honor.

Q. By Mr. Lucas: I show you, Mr. Danziger, Government's Exhibit 112, in evidence, and direct you to the part of the exhibit on the heading of the Securities and Exchange Commission, under date of September 13, 1934. I don't recall that you have testified about that. Have you ever seen that before?

A. I said yesterday, or I said some time I didn't see it in that form.

Q. You saw it in a different form?

A. Yes.

Q. And what is your recollection as to the difference between this and the form you saw?

A. The form that I saw had an addressee on it, either Wake Development Company or the Trinidad International Petroleum Company.

Q. Do you now recognize that as a part of the material that you had on hand at the time you met Carter and got into this Great Eastern deal with him?

A. I don't remember having it at that time. I don't [1524] remember seeing it in this form at that time, or any other form, for that matter.

Q. Well, I call your attention to the fact that

(Testimony of Jacob Morris Danziger.)

the letter which you are now looking at bears the date of 1934——

A. I see that it does.

Q. ——which is prior to the time that you met Mr. Carter. Does that aid you any?

A. I am not confirming that. I just can't fix the date when I met him. I met him shortly before we signed that Great Eastern contract. I don't remember the date of that. And it may be that this date can be correlated to it.

Q. Still directing your attention to that particular paper, did you have any discussion with D. B. Howe, or any communication with D. B. Howe regarding that or a similar piece of paper carrying an address on it?

Mr. Rose: Just a second. I object, your Honor, to this question on the ground that it is bringing in a new party, a conversation or discussion had with Mr. Howe.

The Court: That is preliminary. Answer yes or no.

The Witness: Well, I don't know as I can answer that question yes or no.

The Court: Then your counsel will have to make an objection. I was trying to help him out in his proceeding.

The Witness: If he will ask it again——

Mr. Rose: I want to be certain whether part of that question was proper. He tied it in with Howe, and that is [1525] what I was going to object to.

The Court: Try it again. Ask the question.

Q. Did you ever have any conversation with

(Testimony of Jacob Morris Danziger.)

D. B. Howe or D. B. Howe & Company concerning that exhibit on the letter-head of the Securities and Exchange Commission or one that you saw in a different form but containing the same material?

A. I very likely had discussions with D. B. Howe & Company concerning the registration to which that refers. I have no knowledge of ever recognizing this document as ever having been the subject of any discussion.

Q. But you did discuss with him and probably communicated with them regarding the registration?

A. Oh, yes, they knew about the registration. I told them about it.

Mr. Rose: It seems to me you have exhibited this before somewhere in this proceeding, and an objection was sustained. Am I correct?

Mr. Lucas: I don't know about that. Perhaps at this time I will have better luck. At least, I hope so, Mr. Rose.

Q. By Mr. Lucas: I show you a letter under date of September 20, 1934, on the letter-head of D. B. Howe & Company, addressed to J. M. Danziger, and ask you to examine it.

A. I have done so. [1526]

Q. Do you recall receiving that letter?

A. I don't recall seeing it, but it is very likely I did. It is addressed to me and I had business relations with them at about that time.

Mr. Lucas: I offer this in evidence as government's exhibit next in order.

Mr. Rose: We object to the offer on the ground



(Testimony of Jacob Morris Danziger.)

that it is *res inter alios acta*, and it relates to a purported transaction with a company that doesn't figure and cannot necessarily figure in this proceedings.

Mr. Lucas: The very first and second paragraphs, your Honor,——

Mr. Rose: Except you are assuming, that is just the point. I haven't any objection if you had the document that Howe is talking about.

The Court: What are you driving at, Mr. Lucas?

Mr. Lucas: I want to examine the witness to see whether that letter will refresh his recollection about the Securities and Exchange exhibit that is part of Exhibit 112 or 108, whatever it is here.

The Court: What is your theory? That the witness mutilated that letter.

Mr. Lucas: Not that the witness mutilated that letter at all, but it certainly has a strong possibility that D. B. Howe & Company sent this to him. At least, it is a field to inquire into. [1527]

Mr. Rose: Your Honor, it is incredible——

The Court: Wait a minute.

Mr. Rose: Excuse me.

The Court: Wait a minute. I have to have a little quiet so I can find out what it is all about.

Clerk, go around and get this letter from the witness.

I have in my hand Exhibit No. 112, about which Mr. Lucas has been examining the defendant. You will have to tell me what you are trying to do.

Mr. Lucas: The letter from D. B. Howe ad-

(Testimony of Jacob Morris Danziger.)

dressed to Mr. Danziger says: "We are returning herewith" or "enclosing herewith the Securities and Exchange Commission letter which we have photostated at no expense to you." Part of Exhibit 112 is a letter, a photostat letter of the Securities & Exchange Commission.

The Court: To whom?

Mr. Lucas: That is the point.

The Court: What is the point? What is its application in this case?

Mr. Lucas: That here, long prior to this man Carter coming into this deal, this witness now on the stand was negotiating with D. B. Howe and writing him concerning, as he says, about this Securities and Exchange——

The Court: Writing who?

Mr. Lucas: Writing D. B. Howe, the witness said he was, he had communications with him about the registration. [1528]

The Court: I am still at sea.

Mr. Lucas: There is just one more thing. Carter has preceded this witness on the stand and said with respect to that Securities and Exchange letter, that it was part of the salesman's kit that was provided him by Mr. Danziger in 1935 when he was hiring other salesmen and himself to go out and sell, and it was given to him, Carter says, in the form in which it is now, and I want to ask this witness if he has any knowledge about whether or not that Exhibit 112, referring to the Securities & Exchange thing——

(Testimony of Jacob Morris Danziger.)

The Court: 112?

Mr. Lucas: 112, is what Howe refers to in his letter.

The Court: Has he denied that he furnished this to Carter?

Mr. Lucas: I haven't asked him about it yet. I haven't gotten that far. Counsel interposed——

Mr. Rose: Yes, he has, your Honor, on my examination.

The Court: Ask him about it now.

Mr. Lucas: You are talking about the Securities and Exchange Commission?

The Court: You are talking about 112.

Q. By Mr. Lucas: Mr. Danziger, you have in mind that part of 112 which is a photostat of——

A. Yes.

Q. Do you now admit or deny that that was part of your files in 1935 when you were working out the details of [1529] this Great Eastern deal with Carter?

A. I have never seen it in that form, Mr. Lucas.

Q. You have seen it in a form with——

A. I have seen a copy of that. I got it from the Securities and Exchange Commission since this case was set for trial. I have seen a copy that they sent to me, not a photostat, but a typed copy of this letter, addressed to either the Wake or the Trinidad International Petroleum Company.

Q. We want to talk about this and your possession of it in 1934.

(Testimony of Jacob Morris Danziger.)

A. Well, as I say to you, I have no recollection of ever having seen this in that form.

Mr. Lucas: The admissibility I do not think, if your Honor please, with all due respect to Court and counsel, depends on this witness' recollection of it, if another witness says it was given to him——

The Court: It seems simple enough. You are asking him to admit or deny what Carter claimed, that the defendant furnished him this letter for his salesman's kit.

Mr. Lucas: And he denies it.

The Court: He hasn't said that yet. Ask him if in 1934 he had that particular letter and gave it to Carter.

Q. By Mr. Lucas: Did you or did you not in 1934 have that——

The Court: '35. [1530]

Q. By Mr. Lucas: ——'35 have that particular letter or facsimile thereof?

The Court: No. That particular letter. That is the one Carter said he furnished him.

Mr. Lucas: That one along with probably many others.

The Court: We are not talking about others.

Q. By Mr. Lucas: That particular one.

A. I have no recollection of ever having seen this particular letter or having given it to anybody at any time.

The Court: Now you may inquire, and you may use this to refresh his recollection.



(Testimony of Jacob Morris Danziger.)

Q. By Mr. Lucas: I show you the letter on the stationery of D. B. Howe & Company——

The Court: It speaks for itself. He has read it.

Q. By Mr. Lucas: And ask you to read it and tell me whether or not that portion of it at the top thereof, “Agreeable with your suggestions, we have photostated the letter of the Securities and Exchange Commission and enclose herewith one copy for which there is no charge,” and ask you in considering that letter in connection with this (indicating) is the Securities and Exchange photostat, which is a part of Government’s Exhibit 112, the same document that is referred to in the Howe letter?

A. Well, it is referred to in generalities. I don’t know that accompanying this letter that they sent me this particular Securities and Exchange letter. They refer to [1531] sending me a letter. Now, I don’t know whether it is in that form, I don’t visualize it at all. I can’t take my mind to seeing what was attached to this letter when it came to me. I am very sure I received such a letter, I had business dealings with these people, this letter is addressed to me at Los Angeles, and I undoubtedly received it.

Mr. Lucas: Based on the witness’ answer I ask it be introduced.

The Court: I don’t think the D. B. Howe letter should come in unless Mr. Rose wants it to come in. It was used to elicit a certain answer and that is in. If Mr. Rose wants it in I will leave it in.

Hearing nothing from him it is excluded.

(Testimony of Jacob Morris Danziger.)

Mr. Rose: Your Honor, it appears incredible to me——

The Court: Do you want it in?

Mr. Rose: I don't care, your Honor. I think it is immaterial and there is no proper foundation.

The Court: Excluded.

Q. By Mr. Lucas: Referring to Government's Exhibit No. 95 in evidence, and under the caption, "Tuesday the 6th" addressed to "Dear O T" it says, "Yours dated Sunday arrived today. As you will see from copies sent yesterday your two new inquiries came through and were promptly answered with the usual form letters. I hope for some results for us all;" can you tell me now whether or not the O. T. that you refer to there was the witness and defendant in this case, Carter?

A. Is that a letter of mine, Mr. Lucas?

Q. That is what the evidence would show.

A. What is the date of it?

Q. Well, there is no date—I will give you the entire document for examination.

A. Your question is whether I knew at the time this letter was written that the person I was addressing was Mr. Carter?

Q. Yes, is the "O. T." referred to in that letter Mr. Carter?

A. In all probability it was Mr. Carlton.

Q. In all probability it was Carlton?

A. Yes.

Q. Prior to this time had Carlton ever said any-

(Testimony of Jacob Morris Danziger.)

thing to you about the Great Eastern Natural Gas arrangement?

A. Had Carlton as Carlton, or had Carlton as Mr. Carmen?

Q. Had Carlton as anybody? Do you differentiate between them in your mind now, or do you now concede they were the same person?

A. Mr. Carmen on many occasions discussed with me the Great Eastern deal, if that is the question you are asking me.

Q. No, that isn't the question I am asking you. I asked you if you had discussed prior to this letter with Mr. Carlton.

A. There had been some correspondence with Mr. Carlton. I don't remember ever meeting anybody that had the name of Carlton. There had been some correspondence with Carlton, because he sent in some sales, after I came back from New York.

Q. Did you know that at any time Carlton was in financial trouble or that he needed financial assistance in any way?

A. If my letter indicates something on that subject I knew it at the time.

Q. You said to him as follows, in this letter: "Just wish a lot that I could send you on some money to help over the rough spot, but O. T. I have never been so strapped."

A. Evidently the letter to which that was a reply had indicated that Mr. Carlton, whatever his name was, was in some financial need.

(Testimony of Jacob Morris Danziger.)

Q. What were your beliefs then, that you were writing to Carter?

A. I was writing to Mr. Carlton, that is my memory, of all correspondence after I came back from New York.

Q. Did you have any discussion that Carlton at that time was Carter?

A. When, suspicion when?

Q. When this letter was written.

A. When was it written?

Q. I believe it was in December of 1939 from other letters attached to this exhibit. I will let you examine them.

A. If it was before Mr. Mainland told me some things I don't think I had any real suspicion.

Q. Further, in this letter: "It is a pity that we [1534] can't get organized to get a deal in Canada on TIP by means of a sub-lease." Were you writing that to Carter or Carlton?

A. My impression is that I wrote the whole letter to Mr. Carlton.

Q. Now, you don't recall when Carlton got in on this deal?

A. Some time after my return from London in September, 1937.

Q. Now, do you remember ever addressing anybody else besides Carlton with the salutation "OT" or "Old Timer"?

A. Well, it may be that I addressed somebody that I thought was Carlton who was somebody else.

Q. How would that be?



(Testimony of Jacob Morris Danziger.)

A. Well, if when I was writing to Mr. Carlton he was, in fact, somebody else, I would say that I was addressing whoever that somebody else is.

Q. Let's turn to the McCoy transaction. Do you recall that you gave back any money to Mr. McCoy?

A. I did not give him back any money.

Q. You understood from Mr. McCoy's correspondence with you that he felt that he was swindled in this deal, didn't you?

A. I understood fully what his contentions were, they were all in writing in letter form and I received them.

Q. And you understood from his letter that he [1535] definitely made a request for you to return the money?

A. Well, I remember some threat about returning some money, Mr. Lucas. I don't know whether it was a request or not, but it was in written form, and you have the letters here.

Q. Did you have any suspicion during this exchange of correspondence between yourself and Mr. McCoy that the Baker who called upon McCoy was, in fact, Carter?

A. No, I don't think I got any suspicion that far back, but I don't know when my first suspicion came. It is a thing that grew until finally I had it 100 per cent confirmed in the court room, and pretty well confirmed from things that Mr. Mainland told me as time went on over a period of a year or more of examinations and questions that he was asking

(Testimony of Jacob Morris Danziger.)

me and information that he was giving me concerning this Trinidad deal.

Q. Did you make any independent investigation after the McCoy transaction occurred to determine——

A. I think I wrote Carlton and asked him if he could find out which one of his men was calling upon Mr. McCoy.

Q. Did you at that time know that Carlton had men in the field?

A. I knew that he had because it was obvious that some men in the field other than Carlton had been calling on Mr. McCoy. And if I remember correctly, there was something in McCoy's correspondence about Winslow, and, of course, I knew [1536] Mr. Winslow was working on the matter, because I met him in New York.

Q. Did you write to Winslow?

A. I may have; I don't know.

Q. Have you any copies of any letters that you sent to Winslow?

A. Unless they are in that file that Mr. Mainland has got of mine.

Q. Who is this fellow Edwards who was your Eastern representative?

A. I would ask you, Mr. Lucas. I don't know who he was.

Q. Did you ever meet him? Did you ever meet Edwards?      A. No.

Q. Was he, in fact, an Eastern representative of yours?

(Testimony of Jacob Morris Danziger.)

A. As any salesman that was working on this transaction was a representative in the sale of Wake stock to the Great Eastern stockholders.

Q. Was he a salesman?

A. That was my impression.

Q. On what do you base it?

A. On something somebody said to me on the subject or wrote to me on the subject, or some information that had come in. My guess is that Mrs. Pierce mentioned his name in one of her letters. I remember that.

Q. Yes—not Mrs. Pierce, you mean Mrs. Parsons, Mr. [1537] Danziger?

A. Mrs. Parsons. I am sorry, I still get those two names confused.

Q. You wrote Mrs. Parsons, didn't you, at one time, as follows: "We have your letter of the 5th instant. Mr. Edwards can be addressed through this office at any time"?

A. I think I wrote such a letter.

Q. Was that a fact?

A. Yes, if Mrs. Parsons sent a letter in to Mr. Edwards we would probably have sent it on to Mr. Carlton and told him to deliver it to Mr. Edwards whenever he phoned him where he was. We didn't know where the salesmen were or what their addresses were.

Q. Edwards wasn't around Los Angeles here?

A. I never met anybody with the name Mr. Edwards.

Q. Bearing in mind that this letter to which I

(Testimony of Jacob Morris Danziger.)

have just referred is dated February 8, 1938, and that you corresponded with Mrs. Parsons prior to your departure from England in 1937, and that you discussed the Parsons transactions with Mr. Carter upon your arrival in New York, did you from all of that come to any conclusion that Edwards might be Carter?

A. I had no suspicions when I met Mr. Carmen the last time in New York that Mr. Edwards was anybody but Mr. Edwards or Carmen was anybody else but Carmen or Carter.

Q. There has been some testimony here and statements [1538] of counsel regarding the four registration counts in this indictment. I believe in your sworn testimony, Mr. Danziger, you said that you had examined the Securities Act and had come to a conclusion that you had a right to offer this Wake stock in the manner in which it was offered without any registration statement or file; is that true?

A. Well, I don't know that I testified to that, but that is a fact.

Q. You believe that you had a right to offer it without having a registration statement on file?

A. Yes, I have taken that position at all times.

Q. That position was based upon an examination by you of the Securities Act, was it not?

A. That and other things. I think I asked some hypothetical—do you want me to finish, Mr. Lucas?

Q. Yes, go right ahead, I don't want to interrupt your answer.



(Testimony of Jacob Morris Danziger.)

A. I think I asked some hypothetical questions of the Federal Trade Commission at or about the time that the registration took place as to whether the Wake Company would have a right to sell its privately owned stock.

Mr. Rose: Talk up, Mr. Danziger, I want to hear this too.

The Witness: I finished my answer.

Mr. Rose: You better read it to me. [1539]

(The answer was read.)

Q. By Mr. Lucas: I show you, Mr. Danziger, a pamphlet copy of the Securities and Exchange Commission Act, and ask you if you will refer to any section therein which you claim or asserted as a basis for your contention that no registration statement is necessary.

A. Well, the Act itself says, first, that——

The Court: I don't see why you are going into this.

Mr. Lucas: The Court has expressed a reservation——

The Court: I have to decide the question, not Mr. Danziger, not Mr. Rose, not you.

Mr. Lucas: That's right.

The Court: And whether he decided rightly or wrongly, it happens to be that I am the one who has to decide it, and I don't see any point in examining Mr. Danziger as to his legal view on the question whether or not this particular stock has to be registered.

Mr. Lucas: I shall be very happy to abandon

(Testimony of Jacob Morris Danziger.)

the line of inquiry, if the Court please. That will be all, your Honor.

Mr. Rose: Shall I proceed, your Honor?

The Court: Yes.

### Redirect Examination

By Mr. Rose:

Q. You were asked on cross examination here, Mr. Danziger, whether in the year '37 upon your return from England you were confident that the Trinidad properties were [1540] really valuable and that the necessary finances could be had in England. And I think that you indicated that you still are of that opinion. Have you at all times since your return from England been endeavoring to carry on the financing of the drilling of the Trinidad properties in Trinidad?

A. I have continuously done so.

Mr. Rose: I have a group here which I will place in your custody here and I will start them in chronological order.

Mr. Lucas: I wouldn't know any more about them after looking at them, so you go right ahead.

Mr. Rose: Very well. You don't want to read them?

Mr. Lucas: No, I do not care to read them now.

Q. By Mr. Rose: I show you a letter bearing date 9th of June, 1938, from Birkdale, Lancaster, and ask you in what manner did that come into your custody.

A. That is a letter from Mr. R. W. J. Suther-

(Testimony of Jacob Morris Danziger.)

land that was mailed to me in the mails and received at or about the time it should have been received in the ordinary course of the mails, and it had with it the attached two letters or exhibits whichever you want to call them.

Q. You received them in the same form in which *you* are now?

A. I did, and I have taken them from my file.

Q. And were you carrying out at that time the negotiations therein reflected? [1541]

A. I was.

Q. You read the next one in order.

Mr. Rose: I offer this in evidence as Defendant's next in order.

The Clerk: DD.

The Court: Admitted.

(The document referred to was marked as Defendants' Exhibit DD, and was received in evidence.)

Q. By Mr. Rose: We have the letter on the H.M.S. Petroleum Company Limited, London, letter-head, dated October 14, 1938; in what manner or form did you receive this?

A. I received that in the ordinary course of the mails, it was signed by Mr. Sutherland, and I received it at about the date I should have received it in the mail.

Q. And that is the true signature of R. W. J. Sutherland?

A. That is. It is well known to me.

Q. Will you examine the next one in order?

(Testimony of Jacob Morris Danziger.)

The Court: These will all be admitted as they are offered.

Mr. Rose: I offer this one, your Honor.

The Clerk: EE.

(The document referred to was marked as Defendants' Exhibit EE, and was received in evidence.)

Q. By Mr. Rose: I have here now a letter on the [1542] H.M.S. Petroleum Company letter-head from London, December 9, 1938; in what manner did you receive that communication?

A. I received that in the mails, in the ordinary course of the mails, at or about the time I should have received it, and it bears the signature of Mr. Sutherland. His signature is well known to me.

Q. Will you examine the next one in order?

The Clerk: FF.

Q. By Mr. Rose: I have now a letter of the 12th of January, 1939, on the letter-head of R. W. J. Sutherland & Company from London; in what manner did that come into your possession?

A. I received that in the mail in the ordinary course of the mail at or about the time I should have received it. It bears Mr. Sutherland's signature, it is well known to me, and I produced it from my files.

Mr. Rose: I offer it next in order.

The Clerk: GG.

(The document referred to was marked as Defendants' Exhibit GG, and was received in evidence.)



(Testimony of Jacob Morris Danziger.)

The Court: Mr. Lucas, I think you better have available at such time as I may be prepared to hear from you the expert on the registration counts, whom you had here yesterday, I believe.

Mr. Lucas: Yes, your Honor.

The Court: You better get him in the court room. I [1543] don't know just when, but some time this afternoon——

Mr. Lucas: I will send for him immediately.

The Court: As I say, I don't know when, but I want to dispose of that question.

Q. By Mr. Rose: I have a letter on the letter-head of H.M.S. Petroleum Company, London, dated the 28th of January, 1939; will you indicate in what manner you received that?

A. I received that in the ordinary course of the mail at or about the time I should have received it. It bears Mr. Sutherland's signature. His signature is well known to me, and I produced it from my files.

Mr. Rose: I offer this next in order.

The Clerk: HH.

(The document referred to was received in evidence and was marked as Defendants' Exhibit HH.)

Q. By Mr. Rose: I now exhibit to you a letter on the letter-head of R.W.J. Sutherland & Company from London, dated 30th of December, 1941, which appears to be in handwriting; in whose handwriting is this document?

A. That is in Mr. Sutherland's handwriting.

Q. When did you receive it?

(Testimony of Jacob Morris Danziger.)

A. I received it in the ordinary course of the mail at about the time I should have received it. It is written and signed by Mr. Sutherland; his signature is well known to me; and I produce it from my files. [1544]

Mr. Rose: Next in order.

The Clerk: II.

(The document referred to was marked as Defendants' Exhibit II, and was received in evidence.)

Q. By Mr. Rose: I have now exhibited to you on a letter-head bearing the address of 36 Oxford Road, Birkdale, Lancaster, from England, a letter in pen and ink, bearing date Saturday the 31st of January, 1942, and I will ask you how you received that.

A. It came to me in the ordinary course of the mail. I received it at about the time I should have received it. It is written in Mr. Sutherland's hand, it is written entirely by him. And I produced it from my files.

Mr. Rose: Next in order.

The Clerk: JJ.

(The document referred to was marked as Defendants' Exhibit JJ, and was received in evidence.)

Q. By Mr. Rose: I have before me in pen and ink a letter addressed to you from England, under date October 18, 1943, and bearing air mail British postage, bearing the address to you. I take it you received this in that form?

(Testimony of Jacob Morris Danziger.)

A. I received it in this envelope in the ordinary course of mail at or about the time I should have received it; it is written entirely in Mr. Sutherland's hand, except the check mark that I have on it; it bears his signature; and I produce it from my files. [1545]

Mr. Rose: Next in order.

The Clerk: KK.

(The document referred to was marked as Defendants' Exhibit KK, and was received in evidence.)

The Witness: Here are two together, Mr. Rose.

Q. By Mr. Rose: There is no point in detaching them. I will offer them as one. I have here before you, Mr. Danziger, first, a letter on the letter-head of Sutherland & Company of London, dated January 6, 1944, with an envelope bearing your address, and the postage and the cancellations from England, and one of the 5th day of April, 1944, with an envelope, showing a cancellation postmark from Southport, Lancaster, addressed to you, and I will ask did you receive these in the mails.

A. I received these letters in the mail at or about the time I should have received them in the ordinary course of the mails they are both entirely written in M. Sutherland's hand, and they bear his signature; and I produced them from my file.

Mr. Rose: I offer this next in order.

The Clerk: LL.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendants' Exhibit LL, and was received in evidence.)

Q. By Mr. Rose: Mr. Danziger, were there, in fact, at and around the occasions indicated in the respective dates in the various exhibits that I have alluded to here from [1546] Sutherland and others, were there negotiations of that character in fact being carried on?

A. There were as reflected in the letters.

Q. I will ask you, Mr. Danziger, whether you at any time—you have read this indictment.

A. I have, sir.

Q. Whether you at any time at any place conspired with Carter, Carlton, Carmen, Roberts, Edwards, Williams, Wilson, Dawson, Baker, Carver, Callahan, Connolly, Trinidad International Petroleum Ltd., a Nevada corporation, Wake Development Company, a Delaware corporation, and W. W. Wright, to do any of the acts or things set forth in this indictment as Count 1 thereof?

A. I did not, nor with any of them.

Q. I will ask you whether on the date of May 8, 1939, or at any other date you caused to be placed in the mail the letters set forth on page 13 and made a part of Count 2?

A. I did not.

Q. I direct your attention to Count 3 and ask you whether you did on the 19th day of January, 1939, in the sale to Harry F. Pitts cause to be placed in the mail the letter or the original of the letter affixed to page 15 of this indictment and made a part thereof?

A. I did not.



(Testimony of Jacob Morris Danziger.)

Q. I now direct your attention to Count 4 and ask you whether you did on the 5th day of January, 1939, or at any [1547] other time in the sale to F. A. Russel cause to be placed in the mails the letter bearing date January 5, 1939 which is attached to page 17 of this indictment and made a part thereof? A. I did not.

Q. I ask you, Mr. Danziger, directing your attention to Count 5 thereof, whether you did on the 13th day of September, 1939, place or cause to be placed in the mails in connection with the sale to Adeline B. Skinner of certain securities referred to in said count the check, a photostat of which appears on page 19 of the indictment.

A. I did not.

Q. I direct your attention now to Count 6 and I will ask you, Mr. Danziger, whether you did cause to be placed in the mails or direct anyone to place in the mails on January 28, 1939, in the sale to E. Barrie Smith of certain securities the check, photostat of which is affixed to page 21 of the indictment? A. I did not.

Q. I now direct your attention to Count 7 and I will ask you, Mr. Danziger, whether you did on the 22nd day of May, 1939, in the sale of securities to Harry L. and Ella May Tether, or otherwise cause to be placed in the mail or direct that such act, namely, of mailing, take place of the check, a facsimile of which is set out on page 23 of this indictment and made a part thereof? [1548]

A. I did not.

(Testimony of Jacob Morris Danziger.)

Q. I now direct your attention, Mr. Danziger, to Count 8 and ask you did you on the 26th day of January, 1939, place or cause to be placed in the mails to be delivered to Michael Burns the letter of transmittal, including certain certificates, facsimiles of which in the form of photostats are affixed to and attached to page 25 of the indictment and made a part thereof? A. I did not.

Q. I now direct your attention to Count 9 of this indictment, Mr. Danziger, and ask you whether you did on the 18th day of May, 1939, or at any other time cause to be carried in the mails the originals of the exhibits which are attached to page 27 of the indictment and made a part of the allegations thereof. A. I did not.

Q. I direct your attention now to Count 10 of the indictment, and ask you whether you did on the 20th day of February, 1939, or at any other time direct or instruct or cause to be placed in the mails of the United States the letter or certificates alluding to the transaction with one Harry F. Pitts, facsimiles of which in the form of photostats are affixed to page 29 and made a part of the allegations. A. I did not.

Q. I now direct your attention to Count 11 of this [1549] indictment and ask you, Mr. Danziger, whether on the 4th day of October, 1939, or at any other time you caused to be placed in the mail or directed that it be placed in the mail the original, a facsimile of which is attached to page 31 of the indictment and made a part of those allegations.

(Testimony of Jacob Morris Danziger.)

A. I did not.

Q. I now direct your attention, Mr. Danziger, to Count 12 of this indictment and I ask you whether you did on the 14th day of March, 1940, place or cause to be placed in the mails in Los Angeles or anywhere else the envelope, that is, the original of the envelope, and the letter, the contents in the form of photostat copy and of the envelope being attached to page 32 of the indictment and made a part of those allegations.

A. I did not.

Q. I now direct your attention to Count 13 of the indictment and I will ask you, Mr. Danziger, whether you on the 7th day of March, 1940, or at any other time cause to be placed in the mails of the United States to be delivered to the Philadelphia National Bank or any other bank, or gave any instructions in that connection to any person, to place in the mails the original of a check a photostatic facsimile of which is attached to page 35 of the indictment and made a part of the allegations therein.

A. I did not.

Q. I will ask you, Mr. Danziger, calling your attention [1550] to Count 14 of the indictment whether you did on the 8th day of May, 1939, or at any other time direct or cause in any manner to be placed in the United States mail the check, the original of the photostatic facsimile which is affixed to page 37 of the indictment and made a part of those allegations.

(Testimony of Jacob Morris Danziger.)

A. I did not.

Q. I direct your attention now, Mr. Danziger, to Count 15 of this indictment and I ask you whether you did on the 19th day of December, 1940 direct or participate or instruct anyone or anybody in any manner to be placed in the mails of the United States the original of the check, a photostatic copy facsimile of which is attached to page 39 of this indictment and made a part of those allegations?

A. I did not.

Q. I now direct your attention to Count 16 in the indictment and ask you whether you did on the 26th day of January, 1939, in any manner cause to be placed in the mails or instruct or authorize the placing in the mails of the original of a letter, a photostatic copy of which is affixed to page 41 of the indictment and made a part of the allegations therein?

A. I did not.

Q. Alluding, now, Mr. Danziger, to Count 17 of this indictment, I will ask you whether you with any other person, or the officers of any corporation or parties of any company [1551] conspired to violate Section 17 (a), Subdivision (1) and Section 5, Subdivision (a) Part (2) of the Securities Act of 1933 as amended, or the statutes in 15 U.S.C. Section 77q Subdivision (a) Section (1) thereof and e Subdivision (a) Section (2) and Section 215 of the Criminal Code of 18 U.S.C., Section 338.

A. I did not, and we did not.

Q. You better follow me on the reading of this, because there are certain things here you ought



(Testimony of Jacob Morris Danziger.)

to follow me on particularly. It states here: On or about the 2nd day of July, 1940, at Los Angeles, that is so-called overt act No. 2, page 42, you withdrew from the bank account of Wake Development Company by a check signed by you the sum of \$625.00.

Would it be better if I show you those checks?

A. If it is to be read that I personally withdrew the money, I say I did not. The Wake Development Company withdrew some money.

Q. I am asking you whether you did personally.

A. Not personally, no.

Q. The Wake Development Company did withdraw the money mentioned there as overt act No. 2?

A. I am sure that the Wake Development Company withdrew some money at that time, assuming that those figures are correct, I haven't them in my mind. If you have the checks here—— [1552]

Mr. Rose: Would it be better, your Honor, if I——

The Court: No. I would like you to finish now, Mr. Rose.

Q. By Mr. Rose: There is overt act No. 3 on page 43, which alleges that on the 2nd day of July, 1940, you using the alias Levy purchased for cash a Western Union money order in the sum of \$625.00.

What have you to tell us about that?

A. Well, I didn't use the alias A. Levy. I did purchase some money orders in the name of Mr. Levy as indicated there.

Q. I will ask you in respect to overt act No. 4

(Testimony of Jacob Morris Danziger.)

whether you did on the 21st day of September, 1939—it says here that the Wake Development Company received from Adeline B. Skinner the sum of \$300.00, do you have that particular item that has been marked here in evidence in mind?

A. Yes, I think we did receive it.

Q. On or about September 22, 1939, it is alleged that you caused the sum of \$230.00 to be withdrawn from the bank account of the defendant Wake Development Company by a check payable to cash.

A. Wake Development Company caused that amount to be withdrawn by a check made to cash.

Q. Overt act No. 6, it is alleged there that on the 22nd day of September, 1939, in Los Angeles you using the [1553] alias A. Levy purchased for cash a Western Union money order in the sum of \$180.00.

A. I personally, not using any alias, but in the name of A. Levy, purchased the Western Union money order with cash.

Q. I will ask you with respect to overt act No. 7 whether you on the 7th day of December, 1938, using the alias T. Mack purchased for cash a Western Union money order in the amount of \$102.56 payable to George Carleton.

A. I purchased that draft in the name of Mr. T. Mack.

Q. Referring to overt act No. 8 did you on the 26th day of December, 1940, using the alias A. Levy, purchase six United States postal money

(Testimony of Jacob Morris Danziger.)

orders in the aggregate amount of \$530.00, payable to George Carleton?

A. I purchased those money orders in the name of A. Levy.

Q. I ask you whether on the 12th day of August, 1940, you, using the alias A. Levy, purchased for cash a Postal Telegraph money order in the sum of \$646.58, payable to Mr. George Carleton?

A. I purchased that money order in the name of A. Levy.

Mr. Rose: That is as far as I am going into that phase of the indictment. I may during the recess take a glance and see if I want to present anything else.

*Mr. Rose:* All right, Mr. Rose. [1554]

(A short recess was taken.)

Mr. Rose: You may cross examine.

Mr. Lucas: No cross examination.

Mr. Rose: Step down.

(Witness excused.)

Mr. Rose: The defendants rest.

The Court: Any rebuttal?

Mr. Lucas: Now, your Honor, Mr. Black came down here and he is right here, he is out in the hallway; I didn't understand from your Honor whether or not——

The Court: What I want to know now is whether you have any rebuttal?

Mr. Lucas: Yes, I expect to put him on as an

expert to rebut that matter, or have him answer any questions that your Honor wants.

The Court: Have you any rebuttal testimony?

Mr. Lucas: No, I have no rebuttal testimony. I only have my expert.

The Court: The case is closed.

Mr. Lucas: Yes.

The Court: I will hear you, at Mr. Lucas' request, on the law point on the registration counts.

Mr. Lucas: Mr. Black does not know anything about the merits of this case.

Mr. Rose: His Honor said he would hear him on the point of law. [1555]

The Court: Wait a moment, Mr. Rose; I am running this show.

I will be very grateful for that. I have certainly heard a lot about the merits of it from you gentlemen, and he can make it just as brief as he wants to.

Mr. Lucas: Will you address the Court?

Mr. Rose, this is Mr. Horace Black of the Securities and Exchange Commission.

Will you address the Court?

The Court: The question is whether or not he knows enough about the merits of this particular question, whether or not the stock issued to Wake and owned by Wake was subject to registration. He is advised on that, isn't he?

Mr. Lucas: In a general way.

Mr. Black: If the Court please, I am not advised as to the facts in this case.

The Court: How could you be, unless you gave



it at least three weeks? I have been here listening to them for three weeks. It would take at least three weeks. It has me.

What I want to know is whether or not under the Federal Securities Act the stock which the Wake Development Company held, and spoken of here as privately owned stock, and which was issued to them—was it not prior to 1933?

Mr. Lucas: It was issued to them prior to the going into effect of the Act. [1556]

The Court: It became their property prior to the Act?

Mr. Lucas: Yes, it became their property before; but then, thereafter, it was sold to and reissued by the Wake Company to other persons more than sixty days after it was issued to them.

The Court: It was issued to them in 1931?

Mr. Rose: '33, your Honor.

Mr. Lucas: '33.

The Court: When in '33?

Mr. Rose: Before the enactment.

The Court: I want to get this sixty days nailed down, whatever that has to do with it.

Mr. Lucas: I will stipulate it was issued to them in June, '33, according to the Trinidad or Wake Development Company records which are on file or in evidence.

The Court: What has the sixty days got to do with it?

Mr. Lucas: Because it is mentioned in this law, your Honor.

The Court: In what?

Mr. Lucas: The law. That is the gist of this whole thing. Section 3 (a)(1) has that very provision in it.

The Court: It says what?

Mr. Lucas: "Any security which, prior to or within sixty days"—let's start from the beginning.

"Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the [1557] following classes of securities:

"(1) Any security which, prior to or within sixty days after the enactment of this title, has been sold or disposed of by the issuer——"

The Court: I get your point. This was sold after sixty days after the enactment of the Act?

Mr. Lucas: Yes.

"\* \* \* but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days."

And that is the point Mr. Rose didn't mention to your Honor.

The Court: You are going to claim Wake is an issuer and/or an underwriter?

Mr. Lucas: That's right, and that they sold the stock.

The Court: We know about the sale of the stock, there is no argument about that.

Mr. Lucas: And therefore this limitation put in here——

The Court: Forget the limitation. You are going to claim under the Act they were an issuer and/or underwriter?

Mr. Lucas: That's right; and that the Act as interpreted by the Securities and Exchange Commission covers every sale unless it is specifically exempted under the terms of the Act.

The Court: Now, do you get the thing I want you to talk about? A company was the owner, a corporation was [1558] the owner of shares of stock of another corporation, which it had acquired prior to the enactment of the Securities Act, see?

Mr. Black: Yes, your Honor.

The Court: And it sold it thereafter by a general offering throughout the country, through salesmen. That is the government's claim. Now, whether or not the privately owned stock thus sold generally throughout the country is subject to registration requirements.

Mr. Black: If your Honor please, perhaps I might make my position or make the situation a little clearer if I make a very brief general statement with reference to the registration provisions of the Act.

The Court: All right.

Mr. Black: And if the Court prefers, I should like to do that, and then if the Court would like to ask me any questions as we go along, perhaps that might be the best way to proceed.

The Court: You might keep this in mind, this is a criminal prosecution and the defendant is entitled to the benefit of every reasonable doubt, and that includes doubt as to law as well as fact, at least as far as I am concerned, I am the trier of both here, and if you have any citations where

the Act has been construed as to registration provisions in support of the government's contention they are welcome.

Mr. Black: If your Honor please, I haven't any citations [1559] with me because I didn't understand the Court desired citations in connection with it, but I will be very glad to furnish the Court citations in connection with it if they are desired.

The Court: We will have to have them right now.

Mr. Black: Then, proceeding along in general, the Securities Act of 1933, specifically Section 5 of that Act, requires the registration——

The Court: Do you want me to follow you? Someone has put up here a copy of it.

Mr. Black: Yes, if you please. I gave that to your Honor; I brought it down specially because it would be easier to follow.

The Court: I thought maybe Jehovah's Witnesses brought me some literature.

Mr. Black: In general Section 5 requires the registration of all securities that are sold, offered for sale, or delivered after sale by the mails or by any means or instrumentality of Interstate Commerce, unless an exemption from registration is applicable.

There are exemptions from registration provided in Section 3. That is found, your Honor, on page 4, commencing on page 4 of that compilation. There are exempted securities provided by Section 3. There are exempted transactions provided by Section 4 of the Act, which is found on page 6.



Now, if your Honor will refer to Section 4, the first [1560] clause of Section 4 (1) exempts from registration transactions by any person other than an issuer, underwriter, or dealer. So, then, if a person selling securities is neither of those three the transaction would be exempt. However, the term "underwriter" is defined commencing on page 3 of the Act, Section 2 (11), and that term is defined to mean any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, and so forth.

So if a person offering securities comes within that definition, and your Honor notes how broad that definition is, then he would not be entitled to the first clause, exemption under Section 4.

Now, referring to Section 3, commencing there on page 4, the first sub-section of that Act exempts from registration any security which prior to or within sixty days after the enactment of this title has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days.

The Court: It seems to me what I want to hear you about is whether these people were underwriters within the meaning of the Act.

Mr. Black: May I call your Honor's attention to one [1561] further provision? The last sentence of the definition of the term "underwriter," which

is found there on page 4, the last sentence of that first paragraph:

“As used in this paragraph the term ‘issuer’ shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.”

I call your Honor’s attention to the provision of that definition, because if a person should buy the controlling block of stock from a corporation issuer, and then subsequently should resell that stock——

The Court: That isn’t this case, though.

Mr. Black: It has no blocks? I say I know nothing about the facts of this case.

If they acquired any of the stock, if the Court please, for distribution, if they acquired any of it to sell, to resell, then they would be underwriters within the meaning of Section 2 (11) of the Securities Act.

The Court: That will be a question of fact, I take it, that I will have to decide.

Mr. Black: Yes, if they acquired it to resell, if they acquired it for distribution from the issuer they would be underwriters, and therefore the exemption from registration afforded by the first clause of Section 4 (1) would not be applicable, because they would be an underwriter, and their [1562] transaction would, therefore, not be exempt.

The term issuer, that term is also defined, your Honor.

The Court: Yes, let me hear you on that.

Mr. Black: "The term 'issuer' means—the definition of that term is found on page 2 in sub-paragraph (4).

"The term 'issuer' means every person who issues or proposes to issue any security;\* \* \*"

That is the general definition. There are some specific definitions with reference to particular types of securities, such as voting-trust certificates and certificates of deposit, and——

The Court: I wouldn't think that would be in this case.

Mr. Black: No. They were not that type of securities.

If your Honor would like to hear me on Section 3 (a)(2), the exemption provided for securities offered prior to——

The Court: Page what?

Mr. Black: Page 4.

The Court: I don't see why I need to go into that, because I am assuming the government's position as to the dates, that this is not the type of security issue that gets the time exemption here. I am looking at this, to state it better, just as if the company involved here had acquired the security after the passage of the Federal Securities Act.

Mr. Black: Just as if they had acquired them afterwards?

The Court: Afterwards, that is the way I am looking at it [1563] now.

Mr. Black: Manifestly, if they acquired them for distribution, for resale, after the effective date of this Act, after sixty days from the effective date,

after the effective date of the Act, then, manifestly, they would not be entitled to rely on that exemption from registration.

The Court: That seems to me to be the question I have to decide.

Mr. Black: That is a question of fact, your Honor, that I can't decide.

The Court: Of course you can't; you haven't been here the three weeks.

Mr. Black: Section 3 (a)(1), if your Honor will permit me to discuss it just a minute?

The Court: Yes.

Mr. Black: As a lawyer and judge, naturally, when you refer to the first part of that exemption, which says, "Any security"—is exempt—"which, prior to or within the sixty days after the enactment of this title, has been sold or disposed of by the issuer," and so forth, manifestly the Congress, unless they had a specific intent to make this air-tight insofar as covering all issues of securities, wouldn't have found it necessary to go ahead and make that statement about securities offered prior to the effective date of the Act, because that would not have been necessary; but what they wanted to show was a clear Congressional intent [1564] that this Act covered every offering or sale of securities by the mails or Interstate Commerce unless a specific exemption from registration was given.

The Court: I admire your zeal, but you remind me of the man from Los Angeles at the funeral, who insisted on making a few remarks when the real purpose of the meeting had been completed.



I don't mind that little bit of propaganda here, because you have been around——

Mr. Black: It was not intended that way.

The Court: Don't take me too seriously. I know the question I have to decide, and it has nothing to do with Congress. The question I have to decide is this company having acquired in 1933 a minority block of stock in another company, having sold it to the public two years later, beginning two years later, 1935, whether at the time they acquired it two years previously they acquired it for the purpose of distribution to the public. That is the question I have to decide here.

Mr. Black: If they offered the stock at that time, sir——

The Court: They offered it two years after they got it. They offered it in '33, and this case we are trying has to do with the distribution to the public in 1935.

Mr. Black: That would be a new offering, if the Court please. Assuming those facts, it would be a new offering after the effective date of the Act and the exemption [1565] afforded by Section 3 (a) (1) would not be applicable.

The Court: And it would be a new offering by them and would be subject to registration?

Mr. Black: It would be subject to registration unless there was a specific exemption applicable.

The Court: And there is no exemption applicable?

Mr. Black: I don't know the facts, your Honor.

Mr. Lucas: That is our contention, there is none applicable.

The Court: How would any individual or any company, then, being a private owner of securities, having bought them for investment—when he wanted to sell them, he would have to register?

Mr. Black: If he is either issuer, underwriter, or dealer he would not.

The Court: He would not?

Mr. Black: No.

The Court: Start over again. Take John Doe, the plaintiff is the most ordinary person we can think of, and he happens to have some money and he has—let me put it a little better. John Doe is the owner of a business that he has built up over his lifetime, and he incorporated it, and as he gets in the later years of his life he wants to convert part of his stock holdings into money, see?

Mr. Black: Yes.

The Court: And he goes and hires himself some salesmen, [1566] doesn't go down to Spring Street and deal with anybody, nothing fancy about it, he hires himself some salesmen of his own and he tells them to go out in his own town where he is known and where his business is known and bring him in \$50,000.00, would you have to register that?

Mr. Black: I assume from your statement, your Honor—

The Court: That is not an unusual thing.

Mr. Black: I assume from your statement that John Doe acquired all the block of stock.

The Court: He owned it, he built up the business.

Mr. Black: He owned all the stock?

The Court: Yes.

Mr. Black: Therefore he would be a controlling person within the definition of the term underwriter, therefore he would be an issuer within the meaning of the last sentence of the definition of the term underwriter.

The Court: Supposing he was a minority stockholder in that company and wanted to do that same thing, sell his own property, his minority interest in that company, and employ his own salesmen to do it?

Mr. Black: And he was not in control of the company?

The Court: He was a minority owner of the stock in the company, that is all he had in the company, answering your question as to control, not answering you in the terms you are asking, he was a minority stockholder in a certain company.

Mr. Black: And he would not be in control. Then [1567] transactions of that nature, where there is no element of control involved, your Honor, he would not have to register, because he would be neither issuer or underwriter or dealer.

The Court: How do you distinguish that from this case, Mr. Lucas?

Mr. Lucas: In this case we rely, if the Court please, upon the testimony of Mr. Danziger who says that with respect to the Trinidad International he had all of its stocks, records, or anything else that it had, it had no bank book or money; that he was the controller of Trinidad International,

he was the dominant figure, and that without regard to stock ownership he controlled it. That is manifest not only by the testimony of Mr. Danziger taken by Mr. Mainland, the sworn testimony, but that is manifest, further, from the testimony of Mr. Danziger with respect to the deal made with the Great Eastern Company in the hotel in New York when he, for the Trinidad, as demonstrated by one of the government's exhibits here in the '90's, the contract, entered into a deal with the Great Eastern where he sat as the dominant figure for Trinidad, and at the same time the dominant figure for Wake.

So we say that your Honor's illustration, while correctly pointing out that the stock ownership by Wake was a minority amount of stock, yet Danziger in his sworn testimony before the Securities and Exchange Commission said that he was everything in Trinidad. So that there is that element of [1568] control, that is our answer to that.

Mr. Black: That is correct, your Honor. The control does not necessarily depend on stock ownership or the percentage of ownership. Many other factors can enter into it.

The Court: I see. I am much obliged for you coming down here.

Do you want to be heard any more on the facts in this case?

Mr. Lucas: Not unless your Honor designates some specific fact you would like me to be heard on.

The Court: You are going to waive opening argument?



Mr. Lucas: I am.

The Court: Mr. Rose, do you want to be heard? I know you all want to be heard, but do you want to be heard at some length on the facts?

Mr. Rose: No. I think your Honor has this evidence in mind better than I have. I would like to give you a few observations if you permit it.

The Court: Do you want to do it this evening or is it too late for you to begin this evening?

Mr. Rose: Frankly, your Honor, it would be better if I could, in addressing your Honor, briefly, on the facts allude to some authorities that are somewhere in this maze of papers of mine.

The Court: Do you think you could finish tomorrow [1569] morning?

Mr. Rose: Yes.

The Court: I now rule on the motion to strike the registration counts. I strike them. The registration counts are stricken from the case and a finding of not guilty will be entered on them, or whatever the appropriate finding is. That leaves the other questions.

You are waiving opening argument, and I will hear Mr. Rose tomorrow morning at 10:00 o'clock. If you think you need more time, we will start earlier.

Mr. Rose: I don't think I will take more than an hour.

The Court: Will an hour be adequate for you to finish?

Mr. Lucas: I can finish my closing remarks in an hour.

The Court: I find people usually underestimate their time. Wouldn't it be a good idea to start 9:30 in the morning so as to be sure you won't run into Saturday afternoon. I will leave it entirely to you.

Mr. Rose: May I ask your Honor—it might help me in shortening the observations—is there any particular phase of this you would like to particularly hear?

The Court: I have no questions to ask.

Mr. Rose: Your Honor, this is not a jury case. I don't think I could enlighten you.

The Court: The paper said you both talked for three days.

Mr. Rose: I don't follow the papers. [1570]

The Court: After three days of argument a motion for a directed verdict was made.

I asked you purposely at that stage of the case to discuss the facts and law, and you did. I am not restricting you, Mr. Rose. You prefer to begin at 10:00?

Mr. Rose: Yes. And I will finish at 11:00 or earlier.

The Court: Very well. And you may finish earlier if you want to.

(Whereupon, at 3:50 o'clock p. m., Friday, February 2, 1945, an adjournment was taken until Saturday, February 3, 1945, at 10:00 o'clock a. m.)

Los Angeles, California,

Saturday, February 3, 1945, 10 A. M.

The Clerk: 15173 United States vs. Danziger.

Mr. Lucas: Ready for the government.

Mr. Rose: Ready to proceed.

The Court: Before Mr. Rose begins to speak this should be put on the record. In the early stages of the case, when the government began to introduce its documentary evidence, and before it had produced its corroborating witnesses, objections were made to the introduction of certain of the documentary evidence and it was received subject to being connected up. All documentary evidence which has been received at the trial in that manner shall be deemed to have been received and treated as competent for all purposes except where it may have been specifically rejected. I don't know that there are any such cases that came in provisionally and were later specifically rejected, but if there were those occasions speak for themselves, and in all other cases the reception of the evidence will be deemed to be full and complete for all of the purposes for which it was offered by the government, with exceptions to the defendants in cases where they were taken.

Mr. Rose: May it please your Honor, and counsel for the government: Your Honor will recall at the very beginning of this proceeding here I resisted the motion of the government to sever the proceedings against the defendant [1573] Warren, and I wanted your Honor to know that I seldom,

knowingly, ever resorted to a legal contention without having some authority for the position taken. In the back of my mind at that time lurked the opinions of Wharton, whom we all recognize as an authority on this subject. He says:

“An accomplice is always a competent witness for the prosecution, although his expectation of pardon depends upon the accused’s conviction, except where he is actually under trial jointly with his confederates, and in such case the evidence of persons accused jointly applies.”

In other words, there is a distinction, as your Honor knows. Here he makes the clear-cut statement:

“Accomplices jointly indicted and jointly tried are not competent witnesses against each other.”

I wanted your Honor to know what I had in mind at the time. We have it here in unequivocal language coming from Wharton, whom I, at least, regard as an outstanding authority in the realm of this form of law.

I wanted to discuss, firstly, a few legal concepts I have here before me from my library. *Corpus Juris Secundum*, Volume 92, Page 1291, there is this comment under sub-caption “Discretion of the Court”:

“The extent to which the declarations of conspirators are admissible against others involved in the same conspiracy is to a great extent within the [1574] discretion of the trial court.”

“Acts and declarations of one co-defendant in the presence of another, which have a legitimate



bearing upon the crime which was afterward committed, are admissible against such other.”

You will note there, your Honor, and they cite some Federal cases here, it is the locale where the acts are committed. For example, I have here an observation—I will get to that presently.

Now, reading from page 1292 under the caption “Necessity of Evidence of Conspiracy.” It is declared:

“The conspiracy must be established before the acts and declarations of a co-conspirator are admissible against the accused, and the latter’s connection with the conspiracy must be made out.

“In order that the acts or declarations of an alleged conspirator may be admissible against an alleged co-conspirator, the existence of the conspiracy must be shown; it also must be shown that the accused against whom the evidence is offered was a party to such conspiracy. The same rule applies to acts and declarations of one charged as an aider or abettor of accused.”

Now, under “Nature of Proof Required” at page 1296 we find the following:

“There must, as a rule, be proof of a conspiracy apart from any acts or declarations of the co-defendants [1575] or of the alleged conspirators, for, it is held that the conspiracy cannot be established by the acts and declarations of co-conspirators done or made in the absence of, or without the knowledge of, accused. Indeed, according to some authorities the acts and declarations of co-defendants are not even admissible on the issue of the ex-

istence of conspiracy, although there are also quite a number of well considered cases supporting the view that such acts and declarations may be considered in connection with other proof."

I now turn to page 1298 under the sub-section of "Weight and Sufficiency of Evidence." Here we find:

"The declaration of an alleged conspirator made outside the presence of accused is not, alone and uncorroborated, sufficient *prima facie* proof of the existence of a conspiracy."

That brings to mind, your Honor, the case that is in 40 Federal Sup. 399 (United States vs. Cunningham), which holds:

"Where a charge of conspiracy is limited to two persons, the guilty knowledge must have been shared by both to warrant conviction of either."

I now want to briefly touch upon what we have here at page 1305.

"The general rule is that acts or declarations of co-conspirators, done or made after the termination of [1576] the conspiracy, are inadmissible against an accused conspirator \* \* \*"

"Narrative statements of past events, made after the termination of a conspiracy, are inadmissible against a co-conspirator."

Then on page 1306 under the sub-caption:

"Acts or declarations of co-conspirators subsequent to the accomplishment of the object of the conspiracy generally are inadmissible against another conspirator, but this rule is subject to certain exceptions."

And here are the exceptions:

“Subject to exceptions, as when accused is present at the time, as stated in 768 *infra*, where the object of a conspiracy has been accomplished, the conspiracy terminates and the subsequent acts or declarations of one of the conspirators are not admissible in evidence for the purpose of showing the guilt of another \* \* \*

Now, I want to touch on one additional point of law before I proceed to convey my thoughts, in general, on this whole subject. We have here from the case of *Bosselman vs. United States*, reported in 239 Federal, 84 the statement that: The better practice is not to place reliance upon testimony of an accomplice and require corroboration, citing 217 U. S. 509.

I don't want to resort to the academic practice of [1577] assuming that your Honor is not well familiar with these principles, but I thought it might help us in approaching a consideration of this matter to refresh our recollections on the nomenclature employed in the authorities and in cases on this particular subject.

As I look back to this panorama of evidence, matters that have been presented here, we find what? We find here, your Honor, and we can't get away from it, there isn't a word of evidence to dispute this fact, that some seven and a half million dollars went into this enterprise, this project in Trinidad British West Indies. We are not even talking about the New Mexican phase of this case. These astronomical figures are not disputed, your Honor. Here

we find a property, from some documentary evidence that we have in this record, way back before this alleged conspiracy, which shows that at a shallow depth of one of the wells on this property that you are practically getting a quality of oil in the gravity class of gasoline. Your Honor will remember the observations in 1933 in some of the documents that I have presented to your Honor, where they practically show that the quality of this is 15 per cent better than the best oil you can get in Texas. We know that Texas produces a pretty good quality of oil.

This is something that opposing counsel, your Honor, has ignored from the very beginning of this proceedings. He has started out on a false premise with disregard to [1578] facts that are documented and indisputable, and he started out, as we say, generally—your Honor knows in certain cases you have the law meets the facts, and sometimes it is attempted to make the facts meet the law, but in this case here we do know that long prior to their catching up with Warren, and knowing the facts, these charges upon which the defendants are now on trial before this Honorable Court were formulated and presented and made the issues which your Honor is now called upon to determine. They didn't know what this so-called conspiracy was. They merely surmised it. They didn't talk to Warren or Carter or what have you. All they had—and, incidentally, those documents, these letters, were willingly surrendered to them without subpoena and placed in their hands, and yet they



formulated the charges, and having formulated them they take this arch scoundrel here, by his own confession, and bring him in here and try to let him off on a charge, incidentally, to which he pleaded guilty, of which he is not guilty. The count to which he has pleaded, your Honor, he could never in my opinion as a lawyer be convicted, according to the rules of evidence and the law, if he were not to take the stand against himself on the count to which he has pleaded. He has pleaded, as I remember, to Count 17. It just goes to show the satire. Here they take an admitted scoundrel and move that your Honor dismiss sixteen counts against him, despite his perfidious line of conduct and his resort to [1579] swindling. As I say, I want to get to your Honor right now my view. I don't feel that anybody has been swindled in this case; in other words, I don't think that anybody that got \$10.00 worth of stock for admittedly no-account Great Eastern Gas shares and \$3.00 has been swindled. If your Honor has read those documents—I know opposing counsel hasn't, he wasn't even interested—you will remember the line of documents from England about some of the outstanding people in Great Britain who are discussing putting in millions of dollars in this project up to '43 here. Your Honor will remember it. He didn't even want to look at it. He is not interested. He seems to think it is a swindle, and he has assumed so on nothing, contrary to the geologist's report, and this convincing documentary material that we have here, that this is a very valuable property, that millions and millions of dollars

have been put in, and even up to last year one of the outstanding financiers of England, Sir Cory, who is internationally known as one of the outstanding capitalists of England, appears to be interested, and they formed a company, as your Honor will remember, for over a million pounds in which they are interested in developing this project.

So, where have we any evidence that anybody tried to swindle anybody by the selling to them of these shares of stock in the main for \$3.00 a share? If your Honor keeps in mind the state of this evidence here, as I say, there [1580] is over \$7,000,000.00 going into this project before Danziger takes hold of it.

Now, who is Danziger? Is he a man to be classed in the ilk or in the same classification as this man Warren? We know, and it is not disputed, that Mr. Danziger is a man who has been connected with oil projects all of his life, and projects which have yielded over almost \$2,000,000.00 in profits. Now, there is a man that you can see, from the line of exhibits that have gone in here, who is earnestly endeavoring and as he has testified here he still in his mind feels that he can put this project over.

There is another phase. The S. E. C. with all their bureaucratic ideas authorized the sale of a million dollars worth of the securities, only on the New Mexican phase, disregarding the indisputable facts that the Trinidad thing is one of the outstanding potential oil deals that has ever come to anyone's attention, and your Honor can see that as we examine these records.

We have been deprived by circumstances here, and your Honor very graciously indicated that you were going to give that consideration, your Honor will remember it, at the beginning I said if we are going to protect ourselves against the wild and haphazard declarations of this gentleman Warren we desired an opportunity to take the depositions of outstanding personalities in both Trinidad and in England so that we could produce before your Honor not the tainted [1581] evidence of a tinhorn stock salesman, but present to your Honor from outstanding individuals what this property is, and to convince the Court that so far as we are concerned the defendants that I am representing weren't interested in the form of chicanery and high powered conduct of Warren to which he has so proudly attested. And while I am talking about this, in passing let us take a look at the two personalities involved. Here we have Mr. Danziger who says, "Regardless of what a scoundrel that man is, I wouldn't be one to hurt him, and I wouldn't even give you his address if I knew it." Did he start off with the idea of corralling a number of incriminating documents and things of that kind? No. As a matter of fact, I have criticized him for even protecting this no-account scoundrel. He comes in here with pieces of paper that he has saved from the very beginning of this proceeding, long before any arrangement was made, a scrap of paper, and in common decency that exhibit that opposing counsel made such a fuss about, that letter that went out here in 1944, that "Dear Friend" letter in which he says,

“Don’t let them tell me his address, and I hope the dirty so and so’s do so and so.” Why should a man save a piece of paper that came into his possession of this character, a man with any shred of decency in his system, from a man who has tried to save his hide, and turn it over to the prosecution to be used against a man?

I don’t know what your Honor’s position is on that [1582] point, but my position has consistently been that I wouldn’t be an informer, I wouldn’t turn a man in. That is what we have law enforcement agencies for, and let them do their work. I wouldn’t, as we say in the vernacular, put the finger on anyone.

But I want to show you the type of personality we are dealing with. He saves these things. The worst you can say about this thing here is that it gives him some information to save his own hide, and what does he do? He hasn’t even the common decency to destroy it. He brings it in here and says, “Here, I am going to help you try to railroad an honest man and ruin his career and have him disbarred, and I am going to try to get off lightly here because I am going to come in and tell a lot of fabrications about what this is.”

Let’s go back to the so-called conspiracy and let’s see whether the acts of my client are acts of a criminal character and nature. Your Honor will remember there is documentary evidence here showing that an offer has been made from England to finance the drilling activities in Trinidad before Mr. Danziger departs. Now, was the so-called agreement that of a bunch of high handed henchmen? Mr. Danziger, as



the testimony shows, entered into an agreement in writing with this Great Eastern Gas Company. He goes to Delaware, there is an escrow publicly opened about this proposed sale of 20,000 shares, and the circularizing of [1583] the Great Eastern lists, is something that occurred in 1935, it was an agreement entered into openly, there was nothing surreptitious or secret about it, and, incidentally, what is it about? The Great Eastern stockholders through their very company, and the evidence shows they had about a million shares outstanding, that is, the Great Eastern Company, they circularized their stockholders and offered to pick up the Great Eastern stock that isn't worth anything, or relatively so, and give them \$10.00 worth of Trinidad securities for \$3.00. What happened then? Mr. Danziger goes over to England. The fact that he had a deal is indicated by the exhibit that the government threw in there which shows that half a million dollars of stock, treasury stock, was in fact taken up by a British financial firm shortly after his arrival in Europe, and he tells you when he came back from England he had a definite and unqualified commitment for putting up the money for the drilling of five wells. Now, these are facts.

They attempt to saddle upon us the skullduggery of this man Kramer that went out there, and what did he do? He just stole some property from a woman named Pierce. Were we particeps criminis to that? And what was the conduct of Mr. Danziger? Isn't it obvious, your Honor? That in going over to England and staying around in New York

there he was merely interested in raising sufficient funds, because what did they have to raise if the whole deal went [1584] through? If they had sold those 20,000 shares as per the original agreement, the Wake Development Company would have received \$20,000.00. Now, is that a tremendous sum of money? Your Honor notices that he had to remain in England for almost two years. It costs money. You can't go around with these personalities in England and carry on business and make trips to France and to Sicily and all these things here on a few pennies. Now, to me, the outstanding thing to show that the conscience and intentions of Danziger were unquestionably honest is that when he is told by this high pressure salesman Kramer, in the presence of Warren, "You stick around here and we can raise \$100,000.00," what does Mr. Danziger do? Does he stick around? Does he say, "All right, boys, I will stay around here," or does he stand by the position demonstrated by documentary evidence, "I am going over to Europe, I have got that phase of my plan committed to and financed in England?" So, you see if we approach this thing here from a standpoint of reason, we find that all of the conduct on the part of the defendants that I represent, in the era when opposing counsel claims this diabolical conspiracy was formed, is honorable conduct, it is good conduct. There isn't anything in the nature of a swindle there.

Here in England we find that shortly after his arrival there is an undertaking to buy, less 10 per cent commission, the shares of stock at \$5.00. And

these people here were [1585] getting \$10.00 worth of securities for \$3.00.

Now, when Danziger hears of this improper conduct on the part of Warren and his henchmen, doesn't the evidence show that there was an immediate repudiation of this authority? Absolutely an immediate repudiation. "You are all through, we don't want to have any part of you." Then if there was a conspiracy at that time wasn't it culminated then? How can you terminate a conspiracy in any better way than that? So then we have to look to what, if we want to find when this conspiracy generates? Warren, as I pointed out in the letter, says there was no necessity for any of this thing, these people have got warped minds.

Look who is talking about a warped mind.

They have got warped minds. These sales could have been made without any misrepresentation, legitimately and clean, and we would have no complaints.

Then he writes to Faulkner. We have that long three-page letter in which he promises that the transactions will be clean and unmistakable.

When does this new conspiracy formulate? According to Danziger and the evidence he doesn't see this man again except once when he is introduced by him to Winslow in '37.

Now, we have the statements of the discussions made in '37. Where is there anything in the testimony of Warren that shows the formulating of a conspiracy in '37, because certainly the so-called conspiracy of '35 has [1586] vanished. It is no

longer in existence, if it was at any time a conspiracy. Now, if the conspiracy was to do the acts that are set forth in this indictment, when was it formulated, and between whom? There isn't any evidence that your Honor can really point to, if it was done, and if it is considered to have been a conspiracy it must have been done in the nature of communications, because Danziger doesn't see him, Faulkner doesn't see him or any of these people, it is merely a matter of communications. Then we must look to the letters, and what do we find there?

Do you find in any of these letters a representation that this stock is selling or has been sold at any time for over \$5.00?

Is it a misrepresentation when the Wake Development Company sends Mrs. Parsons a copy of the Craig report? Does your Honor think that Craig report is false or is a misrepresentation? Is there anything to indicate that these various letters that have been introduced, to which opposing counsel shows no interest at all—he can't tell you right now, your Honor, what it is all about, and I think, your Honor, that is a good idea of his way of trying this case, he is not interested in canvassing the facts, he has assumed brazenly and without any right, and has advanced to your Honor the contention that anybody that bought a share of Trinidad stock was mulcted, and that has been his contention, it was a sheer swindle, and he laughs at Danziger's letter [1587] somewhere in this record which hesitates to sell a substantial block of shares for what? All they were getting was a dollar.



Now, you have in evidence here a letter from the Sutherland Company around that period in '38 where he says he will put up the money himself if he can't get some others to start sinking five wells, and he is talking about putting up \$75,000.00 in American money.

I will ask your Honor if you had shares of stock in a company with only 500,000 shares outstanding, where there has been seven and a half million dollars invested long before, with the indications of the quality of oil that is potentially possible from that development from those properties, would you sell the shares for a dollar apiece? The mining stock wasn't worth a penny, that is admitted. The fact that this cycle of peregrinating misrepresentatives going around these various little communities were getting \$3.00, your Honor must keep in mind, nevertheless, that Wake only got \$1.00. Would Danziger, a man with his enthusiasm and his ability as a man that could observe the potentialities of an oil venture with only half a million shares outstanding, would he be willing to sell shares with those potentialities for a dollar a share, unless he needed the money? As I say, counsel for the government can't conceive that Mr. Danziger may, possibly, even with his false enthusiasm, if you want to put it that way, about this [1588] project, and the promise from England as shown by documented evidence that they were going to put up the money to drill the wells, that he may not have been disposed to say, "Well, let's give this man several thousands of

these shares for a dollar apiece;'' he doesn't conceive that is humanly possible. And he doesn't care.

On what basis, on what assumption does the government's counsel justify its position that anybody that put a dollar into this enterprise was per se swindled or intended to be swindled? Has he attempted to bring in somebody to even give you an opinion of any kind at all that he thought that this property wasn't worth anything? No, they haven't even been interested in that, and yet your Honor can see by what has been presented to you as defense exhibits here, that if we had the opportunity that we have been denied here, by reason of the exigencies of the war, and by reason of having no opportunity to take depositions, we could establish to a point of demonstration the value of these properties.

I was interested in hearing Mr. Warren here after hearing Miss Skinner. Remember, she gave her testimony right here in his presence, and what did she say was the transaction? Your Honor will remember it. She said that he said that it was a good oil speculation in New Mexico. He heard her here, and yet he disregards her testimony and tells us this big yarn about how he put it over on Miss Skinner, and [1589] all that. I had that drawn up to confirm my diagnosis of the character of this personality.

As I said to your Honor, and I still mean it, I don't think that man could go out and sell A. T. & T. stock below par without misrepresenting it. I think if he went into a place and he said, "I am selling

securities," and they said, "Well, I would like to get a hold of some A. T. & T. stock at par or under," I think he would have to, in order to satisfy his quirk of mind there, resort to some kind of chicanery. I don't think he could say, "Very well, I will give you the stock, it is pretty good, it pays nice dividends," or something of the kind. That is what we have here.

As I say, your Honor, what kind of a conspiracy have we here? As I pointed out, in the first conspiracy there is a total paucity of any evidence, there isn't any attempt except the throwing out of this person who seeks some favors here, Warren. Let's take one of the phases that opposing counsel has made so much ado about, the use of aliases. According to Warren's testimony he says he never resorted to that practice until '36, so how could that have been a part of the conspiracy? But he interjected here that in his discussion, allegedly, with Mr. Danziger before this Great Eastern deal was put on, "You fellows like to use aliases, I don't care what names you use." That was a voluntary bone that he was throwing the prosecution in [1590] payment, apparently, for his willingness to try to smear us up here. And, yet, when I asked him, "When did you start using the name other than Carmen or Carter," whatever it was, and he said, "We didn't use any names until '36." That is when he started using them.

Then you have this thing to which government counsel has attached so much importance, this Carlisle or Carlton business, on cross examination, your

Honor, and I will show it to you in the record, Warren said he never used the name Carlton till 1940, that was his testimony.

There has been much ado about this business of drawing out cash and making a transmittal of money in the name of Levy. Now, I say to your Honor in all candor what difference does it make? Who was swindled or who was intended to be swindled by that horrible act? Did Mr. Danziger go out and use some flunky in making the application, or did he make that application in his own handwriting? When he was asked whether it was his handwriting, did he say no or did he hedge about it? He says a request came in that the transmittal of that money would be preferred as not coming from Wake, and that request was complied with. How can that possibly be any concern of the government of the United States? What kind of a conspiracy is that? What does it mean?

One of the cases as I remember it says: Conspiracy is a rather comprehensive offense, but we have never permitted it [1591] to go so far that every act or every mistake of a lifetime caused the object of that becoming a factor in an offense.

As I say, your Honor, I can stand up here and I can do a lot of talking, but I just wanted to present my views to your Honor. I am not going to burden the Court with anything else. I am satisfied that your Honor has heard the evidence, you have read the exhibits, your Honor knows the law, and I don't think I am going to accomplish



very much by taking up very much more of your Honor's time.

I just want to call your attention again, your Honor, to the fact that the government has established in the early part of 1936 when Danziger went over to England a financial house had, in fact, agreed to buy 100,000 shares of Trinidad stock at \$5.00 less 10 per cent commission, which is a lot more than any of the persons in this whole panorama of events were ever asked to pay or did pay.

Then, I want to point out to your Honor unless you disbelieve these documents, reputable people in England at all times even up to last year were discussing and considering the putting in of over a million dollars at times into this enterprise. As I said to your Honor, there isn't anything here that your Honor can judiciously say points to the fact that this is a worthless promotion that was developed with the object of trying to swindle a group or any people at all. I don't think anybody has overpaid anything. And if Warren and his henchmen in the course of their conduct have [1592] resorted to devices and trickery, how are we to be charged and where is there any evidence to saddle that thing upon us? I mean evidence. He has thrown in a word here, "Oh, yes, yes, I wrote him a letter".

Did you see the letter? Did you see a copy of it?

Your Honor, in that connection, let us consider the practices of that man and his habits. Hasn't he demonstrated here that he never destroys any-

thing? He has kept scraps of paper, literally, from the first time he ever met anybody in this transaction, and he has produced them and he has turned them over, and yet merely by resorting to the statement, "We wrote to them and told them all about it", that is what he wants your Honor to say is substantial and credible evidence to tie us in with his perfidious conduct and the perfidious conduct of his apparently scoundrel associates.

I say to your Honor, in closing, that your Honor must recognize that I feel I have had a tremendous responsibility here. I am representing a man who has had tremendous success in the past, a man who has dealt with millions, big projects, who has been in this community sixty years, and has been a member of the bar for over forty, and I feel that I have a responsibility, and I hope that your Honor will, in considering this case and arriving at a conclusion, consider, and I feel confident you will, what an adverse verdict in this case on your part would mean, and whether it is justified [1593] under the evidence in this case. I submit it.

The Court: Do you want to recess before you begin to talk?

Mr. Lucas: Not necessarily, unless the Court wants to.

May it please the Court and counsel, I had hoped that Mr. Rose would in his discussion of this case refer to the allegations of this complaint and the proof that was offered in support thereof, rather than talking about some far-off proposition in the island of Trinidad.

The entire approach of the defense to this case reminds me of the old prospector in Arizona who was trying to sell his claims to an eastern greenhorn, and was telling about what the claim showed and didn't show, and ended up by saying, "There is gold in them thar hills". That, apparently, is the defense here when Mr. Danziger says, "There is oil in Trinidad".

I am sure that the specious defense that has been attempted to be introduced and has been vociferously argued is not going to hoodwink this Court. Let's just briefly—and I am not going to bore the Court or consume the time of the Court with any extended argument, but let's just briefly consider this balderdash that there is proof in this record of an expenditure of seven and a half million dollars on this property in Trinidad.

First, I challenge that there was an expenditure of seven and a half million dollars. There is some testimony in [1594] the documentary evidence that seven and a half million dollars may or may not have been raised at some time, but the proof of how much was spent on the property is summed up in the promotion report of this fellow E. Cunningham Craig, who says that when he examined the property, and ostensibly and clearly by reference after this alleged \$7,500,000.00 was spent, he found two shallow wells on the property; and, yet, Danziger comes in here and takes the stand and says that he with years of experience as a producer, refiner and marketer of oil and extensive experience in the oil business, had come to the

conclusion that if he could raise \$75,000.00 he would put down five wells.

Now, I say the logical inference, your Honor, is that the \$7,500,000.00, if it was raised, was a bunk proposition, and that Danziger was only following in the footsteps of other bunks who bunked the English people as Danziger tried to and apparently failed, and did have the success in bunking the American public.

I don't care how many vile epithets Mr. Rose may apply to the witness Carter here. Many years ago I learned the old adage that if you will show me who your company is I will tell you what you are, and birds of a feather flock together.

If Danziger, as he stated in the Barbizon Plaza Hotel in New York, was that man of prodigious respectability and business integrity that his counsel would have you believe [1595] in his argument, he would not have been anxious to connect himself with a man who, at that time, at the very moment Carter met him, was traveling under an assumed name; and it isn't challenged by Mr. Danziger from the witness stand, that testimony of Carter. If Danziger had been the pure and unadulterated high minded business man that his counsel says he was, when Carmen told him that he was traveling under an alias he wouldn't have taken him.

You don't have to resort to the testimony of Carter to convict Danziger. Danziger is convicted by his own testimony taken before the Securities



and Exchange Commission, shown irrefutably in that documentary evidence.

Was Carter the only one that used an alias? Isn't it in this record here that Danziger used aliases? I don't care if he alibied by saying that "A. Levy" was his brother-in-law or "T. Mack" was somebody else, or this or that and the other, it is an alias.

Birds of a feather flock together, the close and intimate association existing between these two men prior to Danziger's departure from England, their close and intimate contact by correspondence which is proven irrefutably and beyond the shadow of a doubt while Danziger was in England, Danziger's immediate contact with this man when he came back, his writing to him of a letter that he wants to see him the minute he gets back, Danziger's own testimony; if your Honor please, in looking back at this thing from begining to end, [1596] I am surprised and amazed, really, at many features of this case.

That witness whom counsel damns and calls a scoundrel told a story here and stood up on cross examination, and that is more than I think Mr. Danziger did, and in every instance of any importance Danziger followed him on the stand and corroborated what Carter said on the witness stand, in every particular except Danziger wouldn't admit his perfidity. The story that Carter told about meeting him, about the writing of these letters and the concoction of this scheme and the writing of these rights, all of that was corroborated by Dan-

ziger when he got on the stand, every single thing. I was amazed with the coincidence of the testimony of each of them about the significant things that happened back there in New York, every detail of it is corroborated by Danziger himself, except he doesn't admit that he was a scoundrel. He wants to call Carter a scoundrel, but he doesn't want to be called one himself.

Now, just to advert briefly to these things that were said by Mr. Rose about nobody being swindled here. I am sure the Court is familiar with the law on this, and to answer what he has said about the alleged belief of Mr. Danziger in the qualities of the oil and the quantity of oil that there may be in the island of Trinidad, all of those questions have been before the courts and have all been decided adversely to the contention of this defendant in many cases. [1597] In the case of *United States vs. Oldenburg*, 135 Fed. (2d) at page 616 it is held that in a prosecution for using the mails to defraud in the sale of securities it was not a defense that the accused honestly believed those ideas disseminated by him and taught by the organization for which he solicited membership.

In the case of *Hawley vs. United States* in 133 Fed. (2) at 966 it was held that in a prosecution for using the mails in furtherance of a scheme to defraud in a sale of mining stock, even if the defendant were deluded by his own imagination, self-delusion does not justify an otherwise baseless representation to others.

Now, on this question of the acts and of co-con-

spirators, and things of that sort, those things, I take it, are so elementary as to take little, if any, refutation.

One more reference to the question of belief, so-called, in the representations. In the case of *Pandolfo vs. United States* 286 Fed. page 8, certiorari denied in 261 U. S., the Court held the fact that one engaged in promoting a business and honestly believes that it will eventually build and profitably operate a plant if it can secure the capital does not justify them in selling stock by false and fraudulent representations.

And that is just exactly what we content here, that Mr. Danziger and these people did. Regardless of Mr. Danziger's belief that there is oil in Trinidad, it is not a defense to [1598] sell stock by base and fraudulent representations as was done here. That is very simple, and the reiteration of it is like bringing coals to Newcastle.

Counsel in the early part of his argument, I don't think this morning, but in arguing his motion, said something about the proposition that the charge with respect to mail fraud in some way or another vitiated the counts with regard to the Securities Act. That has been discussed and decided adversely to his contention in the case of *Pace vs. United States* in 94 Fed. (2d) at page 591, a decision of the Fifth Circuit, where it was held as to what was within the purview of these provisions of the Securities Act as follows: That letters expressing thanks for orders for stock given to defendant's salesmen were held to sufficiently charge offenses

under the Securities Act. The demurrer was overruled in this case.

In *Linday vs. United States*, 108 Fed. (2d), a Sixth Circuit case concerning an offense under Section 17 (a) (1) of the Securities Act, the only mailing alleged was of a letter acknowledging receipt of an order to purchase the stock, and the check received in payment of the security. The conviction was upheld.

Now, I am not going to advert to the long line of authorities that we have here in support of the proposition. I think the Court has with a great degree of patience listened to the witnesses and to counsel, and I want to express my [1599] personal appreciation to the Court for the indulgence that the Court has extended to me in that regard, and show my appreciation, as well as express it, by not unduly prolonging this thing. Just one more point on that mail fraud proposition.

In the case of *Greenbaum vs. United States*, 80 Fed. (2d) 113, I think a decision to which Mr. Rose called the Court's attention, in overruling a demurrer in a mail fraud case the Court said:

"The indictment describes the scheme as a single one for the defrauding of prospective stockholders, and the fact that it states one or more incidents of the scheme which might constitute separate crimes in themselves apart from the use of the mails to promote the scheme does not convert it into two separate offenses under Section 215 of the United States Criminal Code."

That is in answer to anything that Mr. Rose



said in his motion here addressed to the Court at the conclusion of the government's case.

Unless the Court desires to be enlightened or have discussed further particulars, I want to say just in passing that I have checked and double checked the evidence against the indictment on the mailings in the counts, and every count in this indictment is supported. I have a resume here before me of the particular exhibit that is set forth [1600] in the indictment, and its reference to the exhibit in which it is found; I, therefore, say with all seriousness to your Honor that the government feels that it has proven its case beyond any reasonable doubt or any doubt at all on the twelve remaining counts that are left in the indictment, and we submit it.

The Court: Count 7 was dismissed?

Mr. Lucas: Count 7 was dismissed by the government and is therefore out; the Court, on the motion of the defendant, has ruled out Counts 8, 9, 10 and 11; therefore there is remaining Counts 1 to 6, inclusive, Counts 12 to 17, inclusive, as my notes show, your Honor.

The Court: On Counts 1, 2, 3, 4, 5, 6, 12, 13, 14, 15, 16, and 17 I find the defendants each and all guilty as charged in the indictment.

I want a pre-sentence investigation by the Probation Officer as to all of the defendants and that leaves now the question as to what immediate action, if any, should be taken in accord with the practice in this District of the defendant Danziger who is now on bail.

In my District the practice is a certain way; as I sit in other Districts I find that practice differs. The District Attorney is entitled to be heard, and I desire to hear him as to whether or not pending the pre-sentence investigation, which I will ask to be made before next Saturday, the defendant Danziger shall be continued on bail. [1601] Next Saturday morning, a week from today, at 10:00 o'clock, is the time I set for passing sentence in the case. The question on which I will now hear the District Attorney and, of course, defense counsel, is as to whether or not the defendant Danziger shall be continued on bail until that time, or whether he shall be presently committed to custody.

Mr. Lucas: With respect to that, if the Court please, I can say this, the rule, I believe, as established by the Judges in this District in a crime that is a so-called commercial crime, that is, where a defendant is convicted of a crime involving fraud or the acquisition of money by fraud, the general rule is that upon conviction and while awaiting pre-sentence investigation the defendant is incarcerated. Now, to that general rule there are admitted exceptions, and the courts here, the Judges of the respective courts here, have, to my knowledge, made exceptions to that rule, depending upon the circumstances in each particular case. As to the government's position here, and without in any way wanting to force or control the action of the Court, I will say that the government has no animus toward Mr. Danziger. The facts of the case are as thoroughly before the Court as we can give

them; he is a man of age and experience, he has been a member of the bar here for many years; and those are questions that obviously and unquestionably the Court should take in mind on the matter.

The Court: With the thought that I will give the [1602] defendant a chance to make personal arrangements, the bond will be continued pending passing of sentence in the case.

(Whereupon, at 11:05 o'clock a. m., Saturday, February 3, 1945, an adjournment was taken until Saturday, February 10, 1945, at 10:00 o'clock a.m.)

[Endorsed]: Filed March 31, 1945. [1603]

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[Title of District Court and Cause.]

### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that I reported all of the proceedings had in the trial of the above entitled case, which proceedings were conducted in the court presided over by Honorable Claude McColloch on January 16, 17, 18, 19, 20, 23, 24, 25, 26, 29, 30, 31, February 1, 2, and 3, 1945, and that the foregoing volumes are a true and correct transcript of the proceedings had in the above entitled case on the dates specified in said volumes of reporter's

transcript and as hereinbefore indicated and that said transcript contains a true and correct transcription of my stenographic notes of the proceedings had on said occasions.

Dated this 2nd day of November, 1945.

SAMUEL GOLDSTEIN

Official Reporter

[Endorsed]: Filed Nov. 5, 1945.

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[Title of District Court and Cause.]

This certifies that the within and foregoing transcript of testimony is a full, true, correct and complete transcript of the testimony given and taken at the trial of this cause before me, as shown by the Reporter's certificate within, not including the statement given by defendant to Inspector Mainland (Exhibit No. 92), and that original Exhibits Nos. Plfs. 1 to 115 incl. (except No. 31) and Defts. A to LL incl. hereto attached are the Exhibits offered at the trial (other than the Exhibits transcribed), and that said Exhibits may be and they are hereby certified to the Circuit Court of Appeals without transcription for the purposes of the appeal herein, and that the said transcript and Exhibits be and they are hereby settled and certified to the Circuit Court of Appeals as the Bill of Exceptions herein.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed Nov. 5, 1945.



[Endorsed]: No. 10989. United States Circuit Court of Appeals for the Ninth Circuit. Jacob Morris Danziger, Trinidad International Petroleum, Ltd., and Wake Development Company, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California Central Division.

Filed December 10, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

At a Stated Term, to wit: The October Term 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the thirteenth day of February in the year of our Lord one thousand nine hundred and forty-five.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable Clifton Mathews, Circuit Judge, Honorable Albert Lee Stephens, Circuit Judge.

No. 10989

JACOB MORRIS DANZIGER, also known as  
J. M. DANZIGER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

## ORDER ADMITTING APPELLANT TO BAIL

Upon consideration of the motion of appellant, filed February 13, 1945, for admission to bail pending appeal, Mr. Paul Angelillo having been heard on behalf of counsel for appellant, and of the telegraphic opposition of Mr. Charles H. Carr, United States Attorney, counsel for appellee, and by direction of the Court,

It Is Ordered that the motion for admission to bail pending determination of the appeal herein

be, and hereby is granted, and that appellant be admitted to bail in the amount of Five Thousand Dollars (\$5,000.00); the surety or sureties to the bail bond to justify before the Senior District Judge of the United States for the Southern District of California, or Honorable Claude McColloch, trial judge, and the bail bond to be conditioned as required by law, and when approved to be filed with the clerk of the District Court for the Southern District of California, Central Division.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10989

UNITED STATES OF AMERICA,  
Plaintiff and Respondent,

vs.

JACOB MORRIS DANZIGER, etc., TRINIDAD  
INTERNATIONAL PETROLEUM, LTD., a  
corporation, and WAKE DEVELOPMENT  
COMPANY, a corporation, et al,  
Defendants and Appellants.

STATEMENT OF POINTS ON WHICH DE-  
FENDANTS AND APPELLANTS JACOB  
MORRIS DANZIGER, TRINIDAD INTER-  
NATIONAL PETROLEUM, LTD., AND  
WAKE DEVELOPMENT COMPANY IN-  
TEND TO RELY, AND DESIGNATION  
OF RECORD.

To Paul P. O'Brien, Esq., Clerk of said court, and  
to Charles H. Carr and V. P. Lucas, Esqs.,  
attorneys for plaintiff and respondent:

Please Take Notice that the defendants and ap-  
pellants Jacob Morris Danziger, Trinidad Inter-  
national Petroleum, Ltd., a corporation, and Wake  
Development Company, a corporation, on their  
appeal in this case, intend to rely upon the follow-  
ing points, to-wit:



(1) Said appellants, and each of them, adopt as points on appeal the assignment of errors appearing in the Transcript of the Record and numbered 1 to 35, inclusive.

In addition to said assignments of errors, appellants herein urge the following additional points:

(2) Error in denying the motion of the defendant Jacob Morris Danziger for a continuance by reason of the inaccessability of material records in countries foreign to the United States involved in the transactions specified in the indictment and to the impossibility of production of witnesses residing in foreign countries whose testimony would be material to the defendants.

(3) Error in overruling the objection of the defendant Jacob Morris Danziger to the appointment of his counsel, A. Brigham Rose, by order of court over objection to represent the corporate defendants Trinidad International Petroleum, Ltd., and Wake Development Company.

(4) Error in overruling each and all of the objections of defendant Jacob Morris Danziger to the admissibility as against him of the numerous exhibits, being documents and communications of Wake Development Company, a corporation, offered as against the appellants herein.

(5) Error in overruling each and all of the objections of defendant Jacob Morris Danziger to the admissibility as against him of the numerous exhibits, being documents and communications of

Trinidad International Petroleum, Ltd., a corporation, offered as against the appellants herein.

Appellants desire to eliminate numerous exhibits which were primarily received in connection with certain counts specified in the indictment which were dismissed, and appellants instead to procure if possible a stipulation for the consideration of many of the exhibits filed in this court by reference to the originals. Appellants intend by reference on the appeal to refer if necessary to the certified type-written transcript or any part thereof.

JACOB MORRIS DANZIGER  
TRINIDAD INTERNATIONAL  
PETROLEUM, LTD.  
WAKE DEVELOPMENT COM-  
PANY

By A. BRIGHAM ROSE

Attorney for said appellants.

Received copy of the within Defendants' Jacob Morris Danziger, Trinidad International Petroleum, Ltd., and Wake Development Company statement of points on which they intend to rely and designation of the record, this 20 day of December, 1945.

CHARLES H. CARR

United States Attorney

V. P. LUCAS,

Asst. U. S. Attorney,

By W. ALLEN

[Endorsed]: Filed December 22, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF ADDI-  
TIONAL PARTS OF THE RECORD

To: Paul P. O'Brien, Esq., Clerk of the Circuit Court, and to Jacob Morris Danziger, et al., and to A. Brigham Rose, Attorney for Appellant:

Please Take Notice that under Rule 19, subdivision 6, of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the United States of America, Appellee herein hereby designates the following as additional parts of record material for the consideration of the Court in the determination of the appeal.

(1) Appellee designates the printing and inclusion in the record of the entire transcript of the testimony taken in the trial of the case.

(2) The inclusion in the printed record of the following exhibits in addition to those designated by Appellant:

(a) Government's Exhibits 1 to 36, inclusive.

(b) Government's Exhibits 38, 39, 42, 44, 46, to and including 55.

(c) Government's Exhibits 98, 99, 101, 103, 105, 106.

Dated: December 31, 1945.

CHARLES H. CARR,

United States Attorney

JAMES M. CARTER

Assistant U. S. Attorney

E. A. TOLIN

Assistant U. S. Attorney.

V. P. LUCAS

Assistant U. S. Attorney

Attorneys for Appellee.

[Endorsed]: Filed January 7, 1946. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

ORDER THAT ORIGINAL EXHIBITS NEED  
NOT BE PRINTED BUT MAY BE CON-  
SIDERED IN THEIR ORIGINAL FORM

In the interest of economy and good cause therefor appearing, It Is Ordered that the original exhibits in above cause need not be printed within the printed transcript of record, but may be considered by this Court in their original form.

FRANCIS A. GARRECHT

Senior United States Circuit  
Judge.

Dated: San Francisco, Calif., January 8, 1946.

[Endorsed]: Filed January 8, 1946. Paul P. O'Brien, Clerk.



No. 10,989

IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

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JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL  
PETROLEUM, LTD., and WAKE DEVELOPMENT COM-  
PANY,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

**APPELLEE'S AMENDED AND SUPPLE-  
MENTAL BRIEF.**

---

JAMES M. CARTER,

*United States Attorney,*

ERNEST A. TOLIN,

*Assistant United States Attorney,*

United States Postoffice and Courthouse Bldg.,  
Los Angeles 12,

*Attorneys for Appellee.*

**FILED**

JAN 25 1947



## TOPICAL INDEX

	PAGE
Jurisdictional statement .....	1
Statement of the case.....	3
Questions involved in the appeal.....	3
Statutes involved in the appeal.....	4
The facts .....	7
Identity of defendants.....	7
Trinidad International Petroleum, Ltd.....	7
Wake Development Company.....	8
Willard Eugene Warren.....	9
Jacob Morris Danziger.....	10
The conspiracy and scheme to defraud.....	10
Evidence in support of the individual counts.....	19
Argument .....	51
Evidence of use of the mails as charged in Counts V, VI, XIII, XIV, XV and XVII is sufficient.....	60
The conspiracy charged in the indictment is properly pleaded..	67
The trial court did not err in denying the motion of appel- lants to dismiss the indictment for want of prosecution for a continuance of the trial, and to quash the return of serv- ice on the corporate defendants nor in appointing counsel to represent the corporate defendants.....	68
Conclusion .....	76

## TABLE OF AUTHORITIES CITED

CASES	PAGE
Acme Poultry Corporation v. United States, 146 F. (2d) 738; cert. den. 324 U. S. 860.....	74, 75
Barnard v. United States, 16 F. (2d) 451.....	65
Brady v. United States, 26 F. (2d) 400; cert. den. 278 U. S. 621	72
Braverman v. United States, 317 U. S. 49.....	67
Butler v. United States, 53 F. (2d) 800.....	57
Crono v. United States, 59 F. (2d) 339.....	72
Crumpton v. United States, 138 U. S. 361.....	72
Davis v. United States, 55 F. (2d) 550.....	66
Garland v. State of Washington, 232 U. S. 642.....	69
Giles v. United States, 84 F. (2d) 943.....	65
Glasser v. United States, 315 U. S. 60.....	75, 76
Greenbaum v. United States, 80 F. (2d) 113.....	57
Greenbaum v. United States, 80 F. (2d) 113.....	65
Hardy v. United States, 186 U. S. 224.....	72
Henderson v. United States, 143 F. (2d) 681.....	58
Isaacs v. United States, 159 U. S. 487.....	73
Kann v. United States, 323 U. S. 88.....	60, 61, 64
Kaplan v. United States, 18 F. (2d) 939.....	57
Landay v. United States, 108 F. (2d) 698.....	57
Lonergan v. United States, 95 F. (2d) 642.....	57
Lonergan v. United States, 95 F. (2d) 642.....	65
Myers v. United States, 223 Fed. 919.....	57
Spear v. United States, 228 Fed. 485.....	65
Stone v. United States, 113 F. (2d) 70.....	57
United States v. Fleming, 18 Fed. 907.....	65



	PAGE
United States v. Henning, 15 F. (2d) 760.....	69
United States v. John Kelso Co., 86 Fed. 304.....	74
United States v. Kenofskey, 243 U. S. 440.....	64
Wilson v. United States, 190 Fed. 427.....	57
Worthington v. United States, 1 F. (2d) 154; cert. den. 266 U. S. 626.....	69, 70

### STATUTES

Criminal Code, Sec. 215 (18 U. S. C., Sec. 388).....	2, 67
Securities Act of 1933, Sec. 5(a)(2), (15 U. S. C., Sec. 77 (e)(2)) .....	1, 67
Securities Act of 1933, Sec. 17(a)(1), (15 U. S. C., Sec. 77q (a)(1)).....	1, 3, 4, 19, 64, 67
United States Code, Title 15, Sec. 77v.....	2
United States Code, Title 18, Sec. 88 .....	2, 6
United States Code, Title 18, Sec. 338 .....	5, 59, 64, 67
United States Code, Title 18, Sec. 550.....	57
United States Code, Title 28, Sec. 41(2).....	2
United States Code, Title 28, Sec. 225(a), (d) .....	2

### TEXTBOOKS

Cyclopedia of Federal Procedure, Vol. 3, p. 407.....	74
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No. 10,989

IN THE

**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

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JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL  
PETROLEUM, LTD., and WAKE DEVELOPMENT COM-  
PANY,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

**APPELLEE'S AMENDED AND SUPPLE-  
MENTAL BRIEF.**

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**Jurisdictional Statement.**

The United States District Court for the Southern District of California had jurisdiction of appellants and the subject matter and this Court has jurisdiction of the appeal.

Four classes of crime are pleaded in the Indictment:

A. Counts I to VII, inclusive, charge separate violations of Sec. 17 (a)(1), Securities Act of 1933; 15 United States Code 77q(a)(1).

B. Counts VIII to X, inclusive, charge separate violations of Sec. 5 (a)(2), Securities Act of 1933; 15 United

States Code, Sec. 77 (e) (2). (Defendants were acquitted as to these four counts.)

C. Counts XII to XVI, inclusive, charge separate violations of Section 215 Criminal Code, 18 United States Code 388. (Using Mails to Promote Fraud.)

D. Count XVII charges a violation of Title 18, United States Code, Section 88, in that defendants in the Central Division of the Southern District of California conspired to commit offenses against the United States by violating the aforesaid statutes; and that pursuant to said conspiracy, committed certain specified overt acts at Los Angeles, California. Each of the several counts of the Indictment allege that the offenses therein charged were committed in the Central Division of the Southern District of California.

E. Title 15, United States Code, Section 77v, conferred jurisdiction upon the District Court to try the defendants as to the offenses charged in Counts I to XI, inclusive.

F. Title 28, United States Code, Section 41 (2), conferred jurisdiction upon the District Court to try the defendants as to all of the offenses charged in the Indictment.

G. This Court has jurisdiction of the appeal under the provisions of Title 28, United States Code, Section 225 (a) and (d).



### Statement of the Case.

On December 30, 1941, the Grand Jury returned the Indictment herein and it was filed that date. Appellants were thereafter arraigned, and having waived trial by jury, were tried before the Court without a jury. All appellants were adjudged guilty of the offenses charged in Counts I to VI (Sec. 17 (a)(1) Securities Act of 1933, Sec. 17 of (a)(1) Title 15, United States Code). They were acquitted as to Counts VIII to XI, inclusive; convicted as to Counts XII to XVI, inclusive (Mail Fraud), and as to Count XVII, conspiracy to commit the said substantive offenses.

### Questions Involved in the Appeal.

Although presented in several forms, the appellants raise the following basic questions:

A. Is the Evidence Sufficient to Justify the Judgments of Conviction?

B. As to Count XVII, Is the Indictment Sufficient? (Appellant challenges it as "duplicitous, dis-associated, diverse and unrelated.")

C. Does the Transmittal of the Checks and Monies as Charged in Counts V, VI, XIII, XIV, XV and XVII Constitute a Use of the Mails Within the Prohibition of the Statute?

D. Did the Court Err in Denying Appellants' Motion to Dismiss the Indictment for Want of Prosecution?

E. Did the Court Err in Denying the Motion to Quash the Return of Service on the Corporate Defendants?

F. Did the Court Err in Appointing Danziger's Attorney to Represent the Corporate Defendants?

These subjects will be argued under the titles:

1. The Evidence Is Sufficient to Justify the Judgment of Conviction.
2. Evidence of Use of the Mails as Charged in Counts V, VI, XIII, XIV, XV and XVII Is Sufficient.
3. The Trial Court Did Not Err in Denying the Motion of Appellants to Dismiss the Indictment for Want of Prosecution, for a Continuance of the Trial, and to Quash the Return of Service on the Corporate Defendants Nor in Appointing Counsel to Represent the Corporate Defendants.

### **Statutes Involved in the Appeal.**

Title 15, United States Code, Section 77q:

#### *“Fraudulent interstate transactions*

“(a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments or transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

“(1) to employ any device, scheme, or artifice to defraud, or

“(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

“(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

“(b) It shall be unlawful for any person, by the use of any means or instruments or transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, for an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

“(c) The exemptions provided in section 77c shall not apply to the provisions of this section. May 27, 1933, c. 38, Title I, §17, 48 Stat. 84.”

Title 18, United States Code, Section 338:

“(Criminal Code, section 215.) *Using mails to promote frauds; counterfeit money.* Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is

commonly called the 'sawdust swindle,' or 'counterfeit-money fraud,' or by dealing or pretending to deal in what is commonly called 'green articles,' 'green coin,' 'green goods,' 'bills,' 'paper goods,' 'spurious Treasury notes,' 'United States goods,' 'green cigars,' or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than \$1,000, or imprisoned not more than five years, or both. (R.S. §5480; Mar. 2, 1889, c. 393, §1, 25 Stat. 873; Mar. 4, 1909, c. 321, §215, 35 Stat. 1130.)"

Title 18, United States Code, Section 88:

"(*Criminal Code, section 37.*) *Conspiring to commit offense against the United States.* If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such



conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R.S. §5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, §37, 35 Stat. 1096.)”

## The Facts.

### Identity of Defendants.

#### TRINIDAD INTERNATIONAL PETROLEUM, LTD.

This defendant is a corporation organized under the laws of Nevada. [Exhibit 77 is its Minute Book. See also, Exhibit 80—certified copy of Articles of Incorporation.] Appellant Danziger was at all pertinent times president or chairman of the board. Of the million shares of stock issued by this corporation, 500,000 shares were returned to the treasury and 165,000 were issued to the Wake Development Company. Appellant Danziger has managed the affairs of the corporation ever since its formation. Trinidad International Petroleum, Ltd. has never sold any of its stock in the United States. The stock of this appellant sold in this country has been stock sold by the Wake Development Company out of the 165,000 shares which it received as a personal holding company for Danziger’s wife. [Exhibit 92—testimony of appellant Danziger before the Securities and Exchange Commission.]

Upon its organization, Trinidad took over certain oil rights. These oil rights were owned by three persons in Trinidad, one Thomas Hill, one W. A. Gaskin, and one Allahar. They, in turn, had a lease contract with a concern called Standard Mining Company, a New York corporation, which was controlled by Mr. Hill. The Standard Mining Company made a contract with one

Herbert D. Rousse. This contract anticipated the formation of Trinidad and upon the incorporation of Trinidad, Rousse assigned the contract to this appellant. A copy of the contract between Standard Mining Company and Rousse is in evidence as Exhibit 81. The various original oil rights documents were claimed by appellant Danziger to have been turned over to an unidentified concern in London and are not in evidence. [Exhibit 92.] It was conceded by appellant Danziger at the trial that whatever interest Trinidad International Petroleum, Ltd. acquired in the oil rights originally belonging to Hill, Allahar and Gaskin, arose out of the contract, Exhibit 81. In Danziger's testimony before the Securities and Exchange Commission [Exhibit 92], he testified that he had gone to London several years ago to arrange financing for Trinidad, and that a concern there had interested itself in raising money abroad for the financing of the development of Trinidad's oil drilling rights. This arrangement was never consummated and the company has never become qualified to develop the properties in the Island of Trinidad. Beyond unsuccessfully endeavoring to obtain financing for the drilling of some wells under its contract, the corporation has never taken any steps toward qualifying itself to develop its properties.

#### WAKE DEVELOPMENT COMPANY.

This appellant is a Delaware corporation. A certified copy of its Articles of Incorporation is in evidence as Exhibit 113. At all times pertinent to the case it had but one asset. This was originally a block of 165,000 shares of the capital stock of Trinidad International Petroleum, Ltd., which has since diminished by sales of stock to private investors. In Exhibit 92, which is the

Securities and Exchange Commission transcript of appellant Danziger's testimony, appellant Danziger stated that the theory of the integration of these two corporations was that the Standard Mining Company had received certain rights from the three above named original holders of oil rights, and that it turned those rights over to Rouse in exchange for 1,000,000 shares of Trinidad International Petroleum, Ltd. That 500,000 of said shares were returned to the Standard Mining Company which issued 335,000 to the original owners of the rights, Hill, Allahar and Gaskin, and 165,000 shares to Wake Development Company—which, in consideration of Danziger's promise to render services in the actual field operation of Trinidad International Petroleum, Ltd., were to be furnished to that firm. Appellant Danziger was at all times in charge of Wake Development Company. Except for a period from 1926 to 1939, Mrs. Danziger was the beneficial owner of Wake Development Company. During the interval mentioned, Alda Faulkner owned Wake Development Company. She was Danziger's right hand in the office of the Wake Development Company from about 1925 until her death in September, 1939.

#### WILLARD EUGENE WARREN.

This defendant was indicted as Warren C. Carter, and disclosed his true name when called as a witness. He is known by many aliases and employed the following in transactions referred to in the evidence: A. L. Roberts, George Carleton, W. E. Edwards, George Williams, and William Carmen. He is addressed in some of the Exhibits as "O.T.", an abbreviation of "Old Timer" which was appellant Danziger's manner of addressing him.

JACOB MORRIS DANZIGER.

This appellant is ordinarily referred to in the evidence under the name J. M. Danziger. In the transmittal of commissions to Warren, he sometimes used the alias A. Levy. See Exhibits 16 to 21 and the Record pages 420 to 447, which illustrate appellant Danziger's use of the alias A. Levy.

**The Conspiracy and Scheme to Defraud.**

Early in 1935 Appellant Danziger met defendant in New York City and sought his aid as a securities salesman in disposing of shares of stock in Trinidad International Petroleum, Ltd., to members of the public. [R. 1030.]

At that time Trinidad was a Nevada corporation. [Exhibits 77 and 80.] However, it was not proposing to sell its own stock in the United States. What Danziger proposed that Warren sell was a block of 165,000 shares of Trinidad which had been issued to Wake Development Company. This latter concern, a Delaware corporation [Exhibit 113] was a personal holding company of which Alda Faulkner was then reportedly the only beneficial owner. [Exhibit 92.] Mrs. Faulkner, a relative of Danziger by marriage, was his right hand in the office of Wake until her death in 1939.

At the time said proposal was made by Danziger to Warren, Trinidad had issued one million shares of stock. None had been sold in this country but 500,000 shares had been returned to the Treasury and from this 165,000 had been issued to Wake Development Company. The consideration for this transfer to Wake was an undertaking by Danziger to provide Trinidad with actual field manage-



ment of its affairs. Wake had no assets other than said 165,000 shares of Trinidad, and Trinidad in turn had nebulous assets consisting of a right to develop certain oil properties in the Island of Trinidad.<sup>1</sup> In Exhibit 92 Danziger testified the corporation had never become qualified to develop the properties in the Island of Trinidad although it made some effort in England through Danziger to sell some of its own stock there. [Exhibit 92.]

Said proposal to Warren was substantially that Warren and Danziger would compile literature which would refer to a permit which had been issued by Securities Division of the Federal Trade Commission (predecessor to the Securities and Exchange Commission) and that Warren would use the fact that such a permit had in fact been issued to Trinidad as a sales device in approaching prospects. [R. 1030-1032.] The sales, however, were not to

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<sup>1</sup>Upon its organization Trinidad took over certain rights. These oil rights were owned by three persons in Trinidad, one Thomas Hill, one W. A. Gaskin, and one Allahar. They, in turn, had a lease contract with a concern called Standard Mining Company, a New York corporation, which was controlled by Mr. Hill. The Standard Mining Company made a contract with one Herbert D. Rousse. This contract anticipated the formation of Trinidad and upon the incorporation of Trinidad, Rousse assigned the contract to this appellant. A copy of the contract between Standard Mining Company and Rousse is in evidence as Exhibit 81. The various original oil rights documents were claimed by appellant Danziger to have been turned over to an unidentified concern in London and are not in evidence. [Exhibit 92.] It was conceded by appellant Danziger at the trial that whatever interest Trinidad International Petroleum, Ltd. acquired in the oil rights originally belonging to Hill, Allahar and Gaskin, arose out of the contract, Exhibit 81. In Danziger's testimony before the Securities and Exchange Commission [Exhibit 92], he testified that he had gone to London several years ago to arrange financing for Trinidad, and that a concern there had interested itself in raising money abroad for the financing of the development of Trinidad's oil drilling rights.

be made from Trinidad's stock, but from the block of already issued Trinidad stock owned by Wake. In explaining the offering to Warren, Danziger told him that the stock of Trinidad authorized in the permit was not to be sold and that the permit was merely sales propaganda. [R. 1041-1042.]

It was to be Warren's duty to solicit persons who were the holders of various then worthless stocks in other unrelated concerns. These persons were to be offered an arrangement under which they could trade in such in fact worthless stocks as part payment for shares of Trinidad. [R. 1030-1031.] They were to be led to believe that they were dealing with Trinidad, through its fiscal agent, Wake. Danziger told Warren:

"You are giving them the right to buy it (Trinidad stock) at \$3.00 and giving a credit allowance of \$2.00 on their stock, and, in addition to that, we are giving them one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them \$10.00 worth of par value and they are only paying in \$3.00 in cash \* \* \* of course the stock we are selling them, so you will understand it clearly, is the personally owned stock of the Wake Development Company, but, \* \* \* the public won't know the difference, and as far as that is concerned \* \* \* we clear ourselves by specifically stating in here that 'No part of these issues will be offered to you.'"

[R. 1041.]

Warren and Danziger had before them at that time Exhibit 97, a letter draft which Danziger was proposing be used in selling to prospects. The last paragraph of that letter said:

“For the purpose of providing development funds, this company has received authority from the Federal Trade Commission at Washington, D. C., to offer to the public 200,000 shares of its Treasury stock at par, \$5.00 per share. It is also making a similar offer in England. No part of these issues will be offered to you.” [R. 1041.]

Warren testified as to their conversation at that time:

At that time I was a little uncertain what he meant about this, and I asked him to explain. And he told me that he had registered 200,000 shares of stock with the Securities Division of the Federal Trade Commission, and had received a letter from them stating that he was permitted to sell the stock at \$5.00 per share with a commission of 20 per cent allowed.

I asked him if this was a part of the issue we were selling, and he said, “No, we are not offering that for sale.”

I said, “Well, why do you have it in this letter if it is not offered for sale?”

He said, “That is to give you sales propaganda.” He said, “You ought to be able to understand that.” He says, “In other words, here the Commission has authorized this stock to be sold at \$5.00 a share.” He said, “On the South American Oil Field stockholders, you are giving them the right to buy it at \$3.00 and giving a credit allowance of \$2.00 on their stock, and, in addition to that we are giving them

one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them \$10.00 worth of par value and they are only paying in \$3.00 in cash.” “Of course,” he said, “the stock we are selling them, so you will understand it correctly, is the personally owned stock of the Wake Development Company, but,” he said, “the public won’t know the difference, and as far as that is concerned,” he says, “we clear ourselves by specifically stating in here that ‘No part of these issues will be offered to you.’ ” [R. 1041-1043.]<sup>2</sup>

Danziger told Warren that he was an attorney, that Warren did not have to worry, that he had been in the oil business a great many years and knew a great deal about such transactions, that he had been with Pan American Petroleum many years and had written a great many oil contracts for Mr. Doheny. [R. 1030-1049.]

Danziger then offered to divide the proceeds. Warren testified concerning this offer as follows:

Yes, I asked him what arrangement we could make on the deal, what portion of the \$3.00 that I collected would be mine, and how much he expected. And he said, “We will go 50-50. In other words, 50 per cent of the money that you take in. I am furnishing the names, and I will furnish the delivery of the stock; all you have to do is to make the sale and bring the sale to me.” He told me to have the checks made payable to the Wake Development Company, which was his personally owned corporation, and he would make arrangements to send the checks by air mail

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<sup>2</sup>The writing on Exhibit 97 is Danziger's. [R. 1045.]



to California, have them collected as quickly as possible, and wire the funds back so that he could pay me as soon after the collection as possible. I told him that was quite agreeable. [R. 1050.]

Danziger then gave Warren a list of names [R. 1049] but Warren found the list not a good one, partly because the parties named were disgusted with their prior investments and not disposed to invest further. [R. 1051.] At Danziger's suggestion, Warren brought him into contact with a Mr. De Hart who made an arrangement to turn over to Danziger a shareholder list of persons who held stock in Great Eastern Natural Gas Company, a dormant concern. [R. 1051.] A letter was worked out offering these shareholders a trade in value for their stock tied to an arrangement to pay additional money for Trinidad stock. [R. 1054-1061—Exhibits 100, 101.]

Exhibit 41 is a "build-up" letter sent to the shareholders of Great Eastern Natural Gas Company. This letter was worked out by Warren, Danziger and De Hart shortly before Danziger left for an extended stay in England. [R. 1062-1066.]

Danziger and Warren abandoned the original agreement under which Warren was to receive fifty per cent of the gross proceeds of sales and superseded it by a new arrangement, explained in the evidence by Warren as follows:

The conversation took place in the Barbizon Plaza Hotel in the early part of 1935, as I have stated before. When I first brought Mr. De Hart to Mr. Danziger, I told him that after Mr. De Hart had had his first conversation with Mr. Danziger and he left, I told Mr. Danziger that there would have to be

another arrangement worked out between he and myself in respect to the financial arrangement as to the splitup of the commissions or the moneys that would be received from the sale of stock to the Great Eastern stockholders; and at that time we entered into an agreement whereby I would receive one-third commission and one-third for an expense allowance, with the understanding that I would pay all the expenses and the salesmen's commissions out of the two-thirds to be derived from the sale, or in terms of dollars, two dollars out of every three dollars we received was to go to me, out of which I was to pay all expenses and to pay the salesmen's commission and so forth. [R. 1067-1068.]

Danziger and Warren illustrated a total disregard of integrity in their method of approaching prospects by wilfully employing known corrupt salesmen.

This is demonstrated in Warren's testimony concerning their salesman, Franklin:

I told him that I thought I would be able to get together a crew of salesmen, that I had in mind certain men right then. And he said, "That's fine."

At a later date, somewhere along in, I believe now along in July of 1935, I brought to Mr. Danziger's room at the hotel a man by the name of Franklin.

Before I went up to see Mr. Danziger at the occasion of our interview, his and my interview, I left Franklin downstairs and proceeded upstairs to see Mr. Danziger. I told him I had in the lobby a man who I considered to be one of the best security salesmen in the business, but I told him that this man was a tough proposition to handle. I told him at the present time he is engaged in selling oil royalties out

of a firm down town by the name of Shearer & Company and, I said, I think he would be a good man on this deal, providing we could hold him into line.

He said, "Well, what do you mean by that?"

I said, "Well, he is known to make a lot of exaggerated statements, and he is not too careful about what he says about a deal."

Well, Mr. Danziger said, "I believe you can manage him all right, and I don't believe there is anything connected with this deal that a man could state very wrong. In fact, I don't worry about that; what I want to do is raise money right now, and it is up to you to get the money."

Well, I said, "I would like to introduce this fellow to you." So I went downstairs and I got Franklin and I brought him up. Franklin and myself and Danziger talked, and then we left. We started to sell the deal with about five salesmen. Franklin brought along one salesman by the name of Jack Beyers. [R. 1068-1070.]

Aliases were used in approaching the Great Eastern Natural Gas shareholders. Salesmen were given credentials (Exhibit 103 is one such document). Warren took his credential letter under the name "C. Cameron" and Danziger signed it "M. Bishop." [R. 1072—Exhibit 103.] The salesman Franklin used the name "Kramer." [R. 1074.]

It was arranged that the checks taken in from customers would be sent air mail to Los Angeles for collection through Wake; the funds for payment of Warren to be sent to New York for distribution. [R. 1074.]

Danziger went to England after the first sales in 1935 and returned to New York, arriving there September 20, 1937.

After Danziger went to England, Warren communicated with him. [R. 1090.] There had been sales of Trinidad stock prior to Danziger's departure, but none were made to Great Eastern Natural Gas shareholders after he left. [R. 1090.]

Danziger instructed Warren by mail [Exhibit 104] to have Wake letters sent to customers by Mrs. Faulkner in Wake's Los Angeles office. During Danziger's absence Warren wrote him that he was going to try to make some arrangement with a Canadian broker [R. 1091] and Danziger, after his return to Los Angeles, wrote to Warren that he would enter into any new arrangement along GE (Great Eastern) lines with anyone with a list and that there ought to be some Canadian broker who "would fall" for a deal to sell Trinidad stock. [Exhibit 95.] Warren did obtain other lists and did solicit shareholders in other companies, notably South McKenzie Island Mines [R. 1140] and Golden Quebec Mines.

The evidence in support of individual counts illustrates the scheme; its *modus operandi* and Danziger's active participation. Added to the foregoing, it proves the conspiracy to be one to sell worthless stock and undefined profit sharing notes to simple people; to misrepresent the stock and the company to them; and in some instances, to even lead them to believe that a ready market for the stock was in existence, and that if they would but acquire it they could sell at once profitably.



## Evidence in Support of the Individual Counts.

### COUNT ONE.

Count One of the Indictment is drawn to charge an offense under the Securities Act of 1933; 15 U. S. C. 77q (a)(1). Hereafter counts of the Indictment drawn under said Act will be referred to as Securities Acts counts.

In addition to the charges of fraudulent representations, it alleges that on or about May 15, 1940, defendants caused certain matter to be mailed from Los Angeles, California, to Mrs. Elizabeth Parsons, at Pottsville, Pennsylvania. (Mrs. Parsons did not testify.) The Record shows the following specific evidence as to this Count:

While Danziger was in England, sometime during 1936, Warren contacted Mrs. Elizabeth Parsons at Pottsville, Pennsylvania, and made a sale of Trinidad shares to her wherein he took in \$500.00. A second sale grossed \$3,000.00 and a third \$4,000.00. [R. 1096.] Warren testified as to his dealings directly with Mrs. Parsons as follows:

"The first sales that were made to Mrs. Parsons were made by me personally, the first three sales that were made were made by me personally. I sold the Trinidad International Petroleum stock by telling her that I had a connection with the Trinidad International Petroleum people, and that I represented their fiscal agent the Wake Development Company. I told her that my name was Edwards, and that as a result of my connections I was in a position to allow her to buy this security and to give her a certain number of shares of stock in that company. I showed her all of the literature which I had in my possession, which I had received previously on the Great Eastern deal,

to substantiate the fact that I did have some connection with the company. And at that time I wrote in detail to the Wake Development Company office, Alda Faulkner, and told them what I was doing.

\* \* \*

“I showed Mrs. Parsons a paper which I had received from London from Mr. Danziger, and I believe the name of the paper was The London Financial Times or News, or something like that, I don’t remember the exact name, Mr. Danziger sent me quite a few papers from London, telling me that I would know how to use them in the sale of Trinidad. And I showed her a number of stocks in the oil list of this paper which had the name ‘Trinidad’ connected with them; one of them was ‘Trinidad Apex,’ the other one was ‘Trinidad Leaseholds,’ and the other one was—several other Trinidad stocks, and I told her that the company that I was selling her was headed by a former group of people of the Pan American Petroleum & Transport Company, and the Mexican Petroleum Company; that the stock had in former years a very high rating; that all of these men that were formerly connected with the Mexican Petroleum Company and the Pan American Petroleum & Transport Company were now directing their efforts toward the exploitation of oil in Trinidad, British West Indies, through this Trinidad International Petroleum Company; that the President of the company was now in England attending to the financing, large financial operations for the company; that I had personally been in touch with him numerous times; that I knew him personally and that I was doing certain work for the company; and that these shares which I was allowing her to buy was an inside

arrangement, and the price she was getting would be considerably lower than what the stock could be sold for on the London securities market.” [R. 1099-1102.]

He took in 3000 shares of Lamaque Contact gold stock and also some worthless shares of Golden Quebec Mines Limited. [R. 1102.] Warren communicated the sales to Wake at Los Angeles. [R. 1097.] Shortly before Danziger left England in 1937, Warren received a letter dated July 16, 1937, and signed “A. D. F.” It was addressed to “My Dear Old Timer” and enclosed with it were copies of all correspondence had by Wake with Mrs. Parsons. A few days earlier Danziger sent a letter from London, addressed to George Carlton, Esq. (an alias of Warren), wherein he suggested that on his arrival in New York he would like to see the addressee who is identified in the salutation as “My Dear Old Timer.” He went on to say, “possibly I can personally help with Parsons—or anyone else. I would commit murder to get over a nice sale \* \* \*. The ‘president’ will be glad to call on Parsons and explain the encouraging results to date.” He enclosed a copy of a build-up letter to Mrs. Parsons which he had written her from London. This correspondence is in evidence as Exhibit 105.

The foregoing relates the prelude to the specific sale to Mrs. Parsons which is the subject of Count One. Concerning the Count One transaction specifically, Warren testified:

“When Mr. Danziger came back from England, or previous to the time that Mr. Danziger had come back from England, he had written me about his desire to put over a nice sale upon his return to New

York, and he further asked me if there wasn't something that I could do further in the Parsons matter; that he would be very willing to cooperate and help in any way that he could. So when he did come to New York, I brought the subject up that I had an arrangement to have a salesman call on Mrs. Parsons and make a sale. I told him that I had made so many visits to Mrs. Parsons during the course of several sales to her, that I had exhausted my own imagination to create any more sales talk, and that I figured that it was a good idea if I interjected a new personality into the picture.

"I told him I had found a man by the name of Joe Robbins, who I thought would be just the type of man that would appeal to Mrs. Parsons. I told him that we had talked it over and decided that Mr. Robbins would go up there and state that he was a direct representative of Mr. Danziger's from England, and that he represented a financial agent of Mr. Danziger's by the name of A. R. Winslow, and that Winslow had an option or controlled a selling group of a certain number of shares of stock, and that she could purchase a block of that stock, which would be considerably below what the stock was selling for in the English markets. As a matter of fact, we had some receipts made, printed, under the name of 'A. R. Winslow.'

"Then Mr. Robbins went up and made the sale and came back, there wasn't any definite amount set on, the idea was to make the sale for \$10,000.00, but when Mr. Robbins came back he had a check for \$7,000.00 made payable to A. R. Winslow, who was supposed to be a fiscal agent.

"There was no person by the name of A. R. Winslow to my knowledge." [R. 1103-1104.]



The specific matter pleaded in Count One as mailed to Mrs. Parsons is in evidence as a part of Exhibit 85. It is a covering letter used in the transmittal of Trinidad shares and request for signature of a note.

Danziger sent Warren copies of letters which he received from Mrs. Parsons and addressed notations thereon to "O. T." The name "Parsons" was written in code.

In original letters and office copies thereof the name "Parsons" was cut out of the letters. [See Exhibits 85-85A and 85B—Warren's testimony R. 1111-1117.].

### COUNT TWO.

Count Two, a Securities Act count, after pleading by reference the same scheme and artifice to defraud, alleges the mailing of a letter to Mrs. Florence S. Lawyer, from Los Angeles to Yonkers, New York.

Mrs. Lawyer did not testify. Defendant Warren related his dealings with her substantially as follows:

I called at her home in Yonkers and told her that I represented a Canadian concern, to the best of my recollection, and that I understood that as a stockholder of the Golden Quebec Mines Company she had exchanged the shares of the Golden Quebec into the Trinidad International Petroleum Company, who had made an offer to the Golden Quebec stockholders to exchange such shares. She told me, "Why, no, I haven't done anything like that." She said, "This is the first I ever knew about it."

I said, "Well, that's surprising. I thought the Trinidad International Petroleum Company had made all the Golden Quebec stockholders aware of the fact that they would trade in the shares for Trinidad International Petroleum."

I proceeded to tell her a story about the Golden Quebec Mines Company going into receivership, and that the stockholders of the Golden Quebec Mines Company would probably or had received a certain right to exchange their shares, because a group of men that were interested in the Trinidad International Petroleum Company were interested in purchasing the properties that they owned in Canada. She said, well, she hadn't heard anything about it. I told her that the value of the stock was \$5.00, its par value, and the notes could be sold around \$4.80, which was equivalent to the par value of the pound sterling at that time; and that as a representative of the Sterling Securities Company in Toronto, I would like to buy the notes if she had them, but as long as she did not have them, well, the only thing I could suggest to her was to write to the Wake Development Company in Los Angeles and find out why they had never exchanged the notes—or the Golden Quebec Mines stock.

She told me that she certainly would do that by all means, and she thanked me very much for calling on her.

I am not positive, but I believe I used the name of Roberts.

That was the only visit, to the best of my recollection, that I had with Mrs. Lawyer. However, I did telephone her three or four times afterwards.

When I came back to New York, after my talk with Mrs. Lawyer, I wrote to the Wake Development Company in California and advised them that I had just contacted Mrs. Lawyer, and that they might receive an inquiry from her, and to send the regular offer that we had set up as a regular stipulated offer to Golden Quebec Mines stockholders, in the event they did get an inquiry from Mrs. Lawyer.

Then I wanted about six or seven days or so, a length of time I thought an air mail letter would go back and forth from California, and I called Mrs. Lawyer and asked her if she had heard. She told me on the first call that she hadn't received any reply from them as yet. I think this was about five or six days after I called her, and I said, "Well, that's funny, I wouldn't let it drag along too long. If you don't hear from them, I would be insistent and write again."

Then I received a letter from the Wake Development Company in which they sent me a copy of a letter that Mrs. Lawyer had sent them. To the best of my recollection Mrs. Lawyer went on to state that somebody had called on her from the Sterling Securities Company in Canada and stated that they wanted to buy her notes, and so forth, and she wanted to know why they had never issued the stock, and she wanted them to do something about it.

I immediately wrote back to Danziger and stated that under no circumstances should he make an offer to exchange her stock for her under the conditions of her letter, and I suggested that Mr. Danziger write her and tell her that he had had similar inquiries from other people about people offering them higher prices for the stock, and that he had no part of it, and therefore he could not make the exchange on the basis which she offered, and did not desire to do so.

I don't remember all of the letter, but I suggested certain things in the letter, partly which later I found Mr. Danziger had sent, because he sent me a copy of the letter which he wrote her, and then I called the woman again and she told me that she received a letter from them, and they frankly told her they

weren't going to do it, and what was it all about. And I said, "I can't understand why they would do that." I said, "Probably"—I said, "Have you got a copy of the letter you wrote them?"

And she said, "Yes, I have a kept a copy." She said, "I copy everything down."

I said, "Would you mind reading it to me over the telephone?" And she did.

And I said, "That is the reason. You started to talk about outside brokers purchasing the stock, and so forth, and that is one of the things that they don't want. You better write back and tell them that you accept it as a speculation, not with the stipulation as to some future performance or profit that would be performed in the future, or some expectation you had for selling the stock," and so forth. And she said, "All right."

Well, I again received a letter from Los Angeles, which the woman was a little milder—the woman stated practically the same thing, again, in a little different way, and I again wrote back air mail to Mr. Danziger and said that under no circumstances should he accept her exchange under the conditions she wanted to make it, because it would appear to be binding on Mr. Danziger, and I was looking out for his interest as well as my own, not having anything in evidence of that sort. To the best of my knowledge, this interchange of letters took place three or four times, and each time I received a copy from Mr. Danziger, and each time I told him he shouldn't accept the sale. Finally the woman did write to Mr. Danziger, she told me over the 'phone, I proceeded to call her several times during the course of this thing, she did write a letter, finally, stating she would accept the exchange strictly on the speculative merits



of the deal without any conditions to bind them, and so forth. And at the time I received that letter from Mr. Danziger, I said, "As long as you have this in evidence, you can accept the sale." [R. 1126-1131.]

On November 13, 1939, Danziger wrote Mrs. Lawyer the letter pleaded in Count Two. [Exhibit 56.] Danziger sent Warren a copy of it. Warren identified a written memorandum "original clear" which appears on said copy as being in Danziger's handwriting. [R. 1131-1132.] This copy is a part of Exhibit 56. Warren testified that the name "Florence Lawyer" and the street address had originally been on the copy but that he had cut that matter out. [R. 1132.] The letter assured Mrs. Lawyer that her shares and profit sharing notes would be forwarded to her.

### COUNT THREE.

Count Three is a Securities Act count, charging the same scheme and artifice to defraud. A specific letter is alleged to have been mailed by the defendants at Los Angeles, California, to one Harry F. Pitts, Kingston, New York. The letter is in evidence as a part of Exhibit 58. It invites Pitts to acquire Trinidad stock and details what he will have to pay in cash. Mr. Pitts did not testify.

Warren related the circumstances of his dealings with Mr. Pitts substantially as follows:

I asked him if he had received any offer from the Trinidad International Petroleum Company to exchange his Golden Quebec stock for stock and notes in the Trinidad Petroleum Company. I told him I represented some Canadian interests that were

interested in buying the notes of that company, and we were bidding \$4.80 for the notes, and that the stock had a market of around \$5.00, and that the rate of exchange that had been offered to them by the Wake Development Company and the Trinidad International Petroleum Company in California would, naturally, represent him a profit at those figures, and therefore I thought that he might be willing to sell if he had made the exchange. And he told me, "No, I haven't made any exchange. I didn't know anything about it until now."

And I said, "Well, it looks like you have been asleep at the switch, you better get busy and write to them and find out just what kind of an agreement they will go into with you, and if it is still on the basis that it was made originally, we might be able to do some business together."

And he said, "Well, that is awfully nice of you to tell me that." He said, "I will certainly write them right away and find out all about it." And he was a very sociable type of fellow, I remember him especially well because he took me in the back and bought me a drink, and then he and I left together and he drove me down the street; and I remember him especially because he told me there was a full moon out that night, and that was an omen of good luck, and he must have thought I was the good luck omen that came to tell him about this deal. That is why I remember Pitts very well. That is all there was to Pitts' deal.

Later on I went to New York and received a letter that he had written in about stock, and I wrote to Wake Development Company and told them to send the regular form letter that we had agreed upon, to make him the regular offer. Later I heard he had

sent in a check for the amount of shares he had; the amount of the shares I can't remember, but they were sent, and I was later sent my commission on the sale. [R. 1134-1135.]

Under date of January 19, 1939, a letter was mailed Mr. Pitts on the Wake letterhead, stating that his request to exchange 370 shares of Golden Quebec Mines stock for Trinidad stock was accepted; giving him a credit of 65¢ per share and accepting an additional payment in cash. The original letter is in evidence as a part of Exhibit 58. Warren identified it as bearing the signature of Alda Faulkner. This exhibit, so signed by Faulkner, should be read in the light of Exhibit 104, a letter from Danziger to Carmen [one of Warren's aliases R. 1321] wherein Danziger directed Warren to have all future letters go out from Los Angeles and stated that Faulkner would send them on his request.

#### COUNT FOUR.

Count Four is a Securities Act count relating to the same scheme and artifice to defraud and alleging the mailing of a certain letter at Los Angeles to F. A. Russell, Leominster, Massachusetts. The letter so pleaded is in evidence. [Exhibit 87.] The letter advises Russell that he must send in the stock which is to be traded and acknowledges receipt of money.

Mr. Russell did not testify.

Warren testified concerning his dealings with Russell, substantially as follows:

While I was in Canada I obtained some names of South McKenzie Island Mines, I think that is the correct name.

Mr. Russell was on the list. I went into Mr. Russell's house and interviewed he and his wife in their living room. I told him that I understood that he owned some Trinidad International Petroleum notes, preferential profit-sharing notes, and that I represented those Canadian interests, we were interested in acquiring those notes and were willing to pay around \$4.80, which was then the exchange rate for the pound sterling.

I asked him if he had any substantial amount of the notes, that I was interested in picking them up right away for the connection that I had. And he said, "Why, no, you must have it wrong."

And I said, "You are a stockholder in the South McKenzie Island Mines Company, aren't you?"

And he said, "Yes, I have a lot of that."

Well, I said, "How many shares do you have?" I think he mentioned he had quite a number of shares, 10,000, or 15,000 shares. And I said, "Well, evidently you have been left out in the rain, because you could have exchanged those shares of stock for the Trinidad International Petroleum stock and notes, and besides having a certain number of shares of the Trinidad International Petroleum Company, which would be extremely valuable, you would also have the notes which you could sell to me now."

He said, "Well, that is certainly news to me." He said, "How will I find out about this proposition?"

I proceeded to give him the name of the Wake Development Company who was the fiscal agent, as I understood it, the fiscal agent for the exchange, and I said if he proceeded to write to them he might be able to get some results.

He said, "Have you any suggested form that I should write to them?"



And I said, "No, I think you ought to be very specific." I said, "I think you ought to go right to bat on the thing." I said, "Instead of you writing out there direct and asking for an inquiry, I think you ought to make a proffer of a check along with your stock and insist that they exchange it. Tell them that you know how it can be exchanged."

The amount of money that the transaction was supposed to involve was around \$3500.00, to the best of my recollection.

The arrangement for the exchange of stock as I had worked it out at that time would call for the shares of stock which he owned in the South McKenzie Mines plus \$3500.00 in cash.

I can't remember exactly what the arrangement was, but he said, "Well, I wouldn't want to send them \$3500.00 before I know that they would accept it." He said, "Don't you think it is better that I write them first and find out whether they will accept it?"

I said, "Well, I think that is a little weak." I said, "I tell you what you do. You make out a check for, say, 10 per cent, make a *bona fide* offer," I said, "So you will have something concrete, then they will either have to turn it down or return it to you." I said, "That will get you quick action."

So he said, "Well, that's a good idea, I think that is just what I will do, I will write out a check for \$350.00 and I will send it right out there. Who will I make it payable to?"

And I said, "I imagine you should make it payable to the Wake Development Company, because they are the fiscal agents in the transfer office for the stock."

So he said he would do it.

I told him the Trinidad International Petroleum Limited was headed by a group of men who had been

formerly associated with Mr. E. L. Doheny in the enterprises of the Pan American Petroleum and Transport Company and Mexican Petroleum Company; that they had made large sums of money while associated with those enterprises; that during the time they had been with them they had acquired a group of properties in the British West Indies, namely, Trinidad, Port-au-Spain; that these properties had been put into the company, put into the Trinidad International Petroleum Company, after the properties that E. L. Doheny formerly controlled, namely, the Pan American Petroleum and Transport Company and Mexican Petroleum Company had been merged into the Standard Oil of Indiana—I think it was the Standard Oil of Indiana or New Jersey, if my memory doesn't fail me, I think it is Standard Oil of Indiana—and that now these men were expecting to do the same thing with the Trinidad International Petroleum that they had done with the Mexican Petroleum; that the Mexican Petroleum stock had sold as high as \$400.00 a share on the stock exchange, and that the stock and notes of this company was traded both here in the Canadian markets and in London at around their par value, which was around \$5.00 for the stock and \$5.00 for the notes. That is about the extent of the story as I told it.

I had a paper with me at the time, and it was an English paper that I had for quite some time, and I showed him the various stocks and told him that this group was traded among that group, but I didn't designate which one.

I wrote them (Wake) right away after leaving, within the course of a day or so, and told them to expect a letter with a check in it from Mr. Russell for \$350.00. I stated in my notation to the Wake

Development Company or Mr. Danziger, if he was there at the time, I stated in my letter that this was 10 per cent of the amount that they could expect to get after they signified their intention of making the exchange; that the \$350.00 was only a 10 per cent deposit on a \$3500.00 transaction.

In that letter that I sent to them I outlined the number of shares, how much credit they would receive for the shares and how many stocks and notes that I had worked out that the man would get.

I received a notification that the check had been received and had been placed in for collection. Later I received a telegram that they had received another telegram from Mr. Russell telling them to cancel the deal.

—after I had received this telegram advising me—at the Willard Hotel—as stated here, “Decided not interested in transfer of stock. Kindly return check as per letter. Unquote. Advise,” I called Mr. Russell on the telephone and I endeavored to find out from him what had made him change his mind. But Mr. Russell acted very suspicious—

Mr. Russell answered very curtly. He didn’t talk to me in the tone of voice, or in the same manner that he had upon the occasion of my first visit. In fact, he had so little to say to me over the ’phone that I had to nearly—make all the conversation myself.

After my conversation I wrote a letter to Mr. Danziger stating that I didn’t know why he had changed his mind, but evidently something had happened to make him change his mind and, therefore, I would advise him to be guided accordingly, and it probably would be a good idea to issue him stock for the amount of money he paid in on the basis of which the deal had been outlined.

COUNT FIVE.

Count Five is a Securities Act count relating to the same scheme and artifice to defraud. The transmittal of a certain check by mail is pleaded. The transaction concerns a sale of Trinidad stock to Adeline B. Skinner.

Mrs. Skinner, age 73, at the time of the offense, resided in Manaquan, New Jersey.

She knew Warren as Mr. Edwards. [R. 547-548.]

In August, 1939, Warren called upon her. Always referring to him in her testimony by the name of Edwards, Miss Skinner testified substantially as follows:

Using the name Edwards [R. 548] Warren called in person and stated that she, as an owner of Great Eastern Natural Gas probably still had a right to turn it into Trinidad for stock of that company; that Trinidad was listed on the London Stock Exchange [R. 553] and owned very valuable potential oil land in New Mexico. He advised her to write Wake and determine whether she could still avail herself of the offer to trade in her Great Eastern stock.

He told her he would return after she had an opportunity to hear from the company [R. 555] and a few days later he telephoned her and she told him that Trinidad was disposed to treat the request favorably. [R. 555.]

Warren told her that he was around buying the Trinidad notes. She inquired what he would pay for them and he told her three hundred fifty dollars, that they would cost her three hundred. [R. 558.]

Some days later another man called on her [identified in Warren's testimony as Mike O'Brien, a confederate—R. 1155].



This man did not identify himself to her beyond stating that he represented the Trinidad Company. He told her the notes had a value of \$500.00 and the stock had a value of sixteen to eighteen dollars per share. [R. 562.]

On September 12, 1939, she bought a cashier's check [Exhibit 38, R. 563] and transmitted it to Wake in the purchase of Trinidad stock and notes.

Warren, in testifying to the transaction with Miss Skinner, related his conversations with her substantially as follows:

I told her I represented some Canadian interests. I believe I told her I represented the Sterling Securities Company of Montreal, and I was interested in the purchase of some notes that I understood she owned in the Trinidad International Petroleum Company, and I wanted to know if she desired to sell them. And she said, "I don't have any notes in that company." And I said, "Well, that is very strange. According to the list of names I have, your name appears on it. Were you a stockholder in the Great Eastern Natural Gas Company that was the stock that was traded in for the Trinidad stock?"

And she said, "Oh, yes, I have some Great Eastern Natural Gas stock."

I asked her how many shares she had. And to the best of my memory, I think it was a hundred shares of stock. And she said, "Well, what would you suggest that I do?"

And I told her, I asked her if she had ever received any mail from the Trinidad company about offering an exchange, and she said, "Well, now, I don't know. I might have received something some

time back, but I don't remember of ever doing anything about it." She said, "Well, is this stock any good?"

And I said, "Yes, the Trinidad International Petroleum stock is good, but the Great Eastern Natural Gas stock doesn't have any market; and I think it would be a very good idea if you got in touch with these people. You say you have a letter?"

Then she said, "Well, I will look it up."

And I said, "Well, I know where they are located in Los Angeles, California, and they have a fiscal agent by the name of the Wake Development Company. They make all the transfers. Now, if you want the address I will be glad to give it to you. You communicate with them, and then at a later date I will come back and see you."

Then she asked me, "Well, does this stock have any value? Would there be any object in me making the exchange?"

And I said, "There certainly would, because the notes are worth about \$4.80. I would be willing to pay that. The stock is worth around \$5.00 a share. There you would have \$10.00 worth of par value stock, and it would only cost you \$3.00 to make the exchange, plus your old stock, and that would certainly bail you out regardless of what you paid for the Great Eastern stock."

And she said, "Well, that sounds very interesting to me, and I am very pleased to get the information and I shall write to them immediately."

I think at the time I had an English paper with me and I showed her quotations of various Trinidad stocks, oil stocks that were listed, and told her that this stock was traded among those stocks on the English markets.

I wrote a letter to the Wake Development Company and told them that I had made the call on Mrs. Skinner and they might expect an inquiry from her, and to answer her in the regular way as we had agreed previously to do on all inquiries of that type, and to advise me—

There had been a prescribed routine laid down between the Wake Development office, Mr. Danziger, Mrs. Faulkner, and myself, which we adhered to a certain procedure in regard to all of these calls, and after we had made a certain number of the calls and had worked out the plan we always wrote instructions in a very terse manner, stating, "Give them the regular answer, short form," or "long form," as we used to say. There were, in the beginning, two versions of the type of answers that were to be made. Some of them were short and some were a little longer, and I usually stated which answer they were to give, according to the circumstances of the call, and then it was established—then it was agreed that whenever an inquiry came in they sent me a copy, either the original letter—in the beginning I received a great many original letters, and then as time went on I received copies of the original letters on yellow sheets or second sheets, showing what they had received from the customer and what they had answered the customer, and then I would give any further instructions that I had at that time. That was all done by mail back and forth between New York and Los Angeles, or wherever I happened to be during my travels in making these calls. [R. 1151-1154.]

Warren then sent Mike O'Brien to see Miss Skinner. [R. 1155.] A week or so after O'Brien called on her, Warren received carbon copies of Exhibits 39, 40 and 41 which are letters between Miss Skinner and Wake where-

in the receipt of her payment is acknowledged and the issuance of Trinidad shares and notes to her discussed. Said carbon copies were sent to him by the Los Angeles office of Wake.

Warren received \$200.00 less wiring charges as his part in the Skinner transaction. [R. 1161.] This count charges the use of the mail in collection of Miss Skinner's \$300.00 check. The check is Exhibit 38.

#### COUNT SIX.

Count Six is a Securities Act count relating to the same scheme and device to defraud. The transmission through United States Mails of a certain check is pleaded. It is alleged that the mails were used in connection with a sale of Securities to E. Barrie Smith. Specifically, appellants are accused of transmitting Smith's \$195.00 check through the mail for collection. The check is Exhibit 59.

Warren testified in substance concerning his dealings with Smith as follows:

I asked E. Barrie Smith if he had any Trinidad preferential profit-sharing notes. He said to me, "Why, no. Why do you ask me that?"

I said, "Well, I had your name on a list here as being a possible owner of the notes of that company, and I represent some Canadian interests who are interested in buying the notes."

And he said, "No, I never heard of it."

I said, "Well, do you own any other Canadian securities, principally Golden Quebec Mines Limited?"

He said, "Yes, come to think about it, I do own some shares in that."



I knew ahead of time how many shares he had, but I asked him to tell me how many shares he had, and he answered a certain number of shares, and he said, "What has that to do with it?" And I said, "You can exchange those shares for Trinidad International Petroleum stock and notes if you will write to the company in Los Angeles and tell them that you own the securities and that you have never been made aware of the rights to exchange it, or any offer ever having been made to you previously."

He said, "Well, why would I get stock in an oil company for gold mining stock?"

And I stated to him that the properties of the Golden Quebec Mines Limited were being sold in a receivership proceedings, and that my understanding was some men interested in oil properties were going into the gold business in Canada and were buying up the properties out of receivership, and because there were certain difficulties between the stockholders and the committees for the receivers, that they had made an arrangement whereby the owners of the Trinidad oil stocks were going to allow them to buy some shares in this company for any equity that they might have had in the old Golden Quebec properties. And he said it was the first he had ever known about it, but he would write out there and see if he couldn't exchange his shares. And that was about all the conversation I had with him, and he said, "Well, will I hear from you again?" And I said, "Yes, I will get in touch with you probably in a couple of weeks and see if you have the notes, and at that time we can do some business."

I did communicate with the Wake Development Company on that call and told them the circumstances of my call, briefly, stating that I had made a call and

they would receive an inquiry, and to answer them in the regular form letter that we had arranged previously to answer on all inquiries from stockholders of the Golden Quebec Mines Limited. [R. 1162-1164.]

#### COUNT TWELVE.

Count Twelve is drawn to charge the offense prohibited by Title 18, Section 338, United States Code, and describes the offense commonly known as Mail Fraud.

It charges the same scheme and artifice alleged in Count One and refers to the mailing of a specific letter from Los Angeles to J. Arthur Hazelton, Mantua, New Jersey.

There was a long course of dealing between the appellants, Warner and Hazelton, and the letter described in the Indictment was mailed after the victim had been induced to make his first payments, and in the furtherance of the scheme to obtain further money from him. To place this letter [Ex. 34] in its proper perspective, it is necessary to relate the entire history of the Hazelton transaction.

Hazelton knew Warren as A. L. Roberts.

Hazelton owned 300 shares of Martin Custom Tire stock. This concern was in bankruptcy. Using the name A. L. Roberts, Warren telephoned Hazelton and offered to give the stock substantial value in a trade for Trinidad stock and profit-sharing notes. [R. 452.]

After preliminary telephone conversations, Warren called on Hazelton in June, 1938, and told him Trinidad International Petroleum stock was listed on the London Exchange. [R. 454.]

The Trinidad stock was available to Hazelton in a combination of one share of stock and one profit-sharing note. The unit value was fixed as eight dollars.

Hazelton bought seven hundred units of Trinidad through Warren.

He sold \$3,743.57 worth of shares in other companies in order to finance the purchase. [Ex. 23, R. 465.] At that time Warren told him that the Trinidad units were listed on the London Stock Exchange and that Trinidad had oil producing properties on the Island of Trinidad.

There was a great deal of correspondence between Wake and Hazelton, accumulated as Exhibit 24. It shows appellant Danziger participating directly in the transaction. The last page of Exhibit 24 is a letter from Danziger to Hazelton informing him of sales of Trinidad notes at prices indicative of substantial value.

Directly concerning Exhibit 34, the letter complained of in Count Twelve, Hazelton testified that Warren called on him in March of 1940 and represented that

“they were going to form a syndicate to dispose of the profit sharing notes and the stock; and it was to include 1200 units all told. At that time he said he had to personally contact the parties in California, and then from there he had to come back to New York, and then he was going to Miami, and then to Trinidad to confirm the sale which was supposed to have a deadline, provided he got these 1200 units together. The value that he placed upon it at that time was approximately thirteen dollars and a half. That was to include one share of stock and one unit. One was not to be good without the other. [R. 488-489.]

“He said he had to make personal contact himself. He was short on funds and it would take seven or eight hundred dollars. It was finally agreed that I advance him the money to finance the trip. [R. 489.]

“He said that this deal had to be transacted through parties in California, namely, the Wake Development Company, and he was to fly there to complete the deal, and he said it would be a hard matter to pick up the profit sharing notes, to combine with the stock certificate, and one wouldn't be acceptable without the other, to conclude that 1200 unit deal. [R. 493, 494.]

“He said that this group had been willing to accept an offer of thirteen dollars and a half or seventy or seventy-one shillings in English money, from a Mr. Stanley who was supposed to be representing the English interest.

“That was to be the price paid per unit, one share of stock and one of note.

“He said while he was in California he had contacted members of this Wake Company, mentioning Mr. Danziger, and they were connected with the Doheny interests, and they were more or less involved a great deal in selling oil, and they could dispose of it that way, and he had several connections, that was the reason he would be offered to put in this block of 1200 units of stock, which this syndicate was selling to the British interests through a Mr. Stanley. [R. 500, 501.]

Hazelton was to derive \$9895.00 as his share of the sale to Mr. Stanley. [R. 502.]

Hazelton sent a \$300.00 cashier's check to Wake in care of Roberts. [R. 491, Ex. 29.] He also sent four Postal Money Orders for \$100.00 each. [R. 491.]



Thereafter he received Exhibit 34 through the mail. This is the letter described in Count Twelve. It was post-marked "Los Angeles." The letter was purportedly written in Los Angeles and described Warren's plans (under the alias Roberts) to return to New York and "leave for the properties." It asked for another \$100.00 and stated that after such payment, Hazelton would owe \$225.00. It is clearly a letter designed to nurture confidence and obtain the additional money requested.

Warren did not go to Los Angeles, nor to Trinidad. He rounded out the story of the letter, Exhibit 34, substantially as follows:

I called Dr. Hazelton on the telephone from New York and told him I was going to visit him because I had a matter I wanted to talk over with him. And in a few days I went down to see Dr. Hazelton in Mantua, New Jersey.

I explained to Dr. Hazelton that the stock of the Trinidad International Petroleum had not gone up as high in price as I had anticipated during the two years or a year and a half interim that I had sold him his previous stock or had been instrumental in getting him to acquire his holdings in the company, but that I had every reason to believe that soon there would be a deal culminated whereby a certain number of shares of stock would be taken up by a syndicate group. I told him that his holdings in the company were not adequate enough to entitle him to participate in that sale, so I told him that I wanted to increase his holdings in the company by an additional thousand shares of stock. He very frankly told me that he could not think of such a thing; that it was beyond his ability to furnish any more funds, and he told me that he didn't have any more securities. He showed me some royalties that he had

bought since I sold him the last time, amounting to \$2500.00, stating that that was the last money he had, and he couldn't put in any money. I then asked him if he couldn't put in a smaller amount, and he reiterated what he said, he just simply was strapped, he had no more money to put into anything and he couldn't go any further.

At that time I told him that I was contemplating a trip to Los Angeles, and that from Los Angeles I was coming back to New York, and that I was going down to Trinidad to work on this arrangement whereby we were going to dispose of the stock; that I would take care of him in some manner, shape or form, regardless of whether his holdings were large enough to warrant his participation in the syndicate. He said, well, that would be fine, he hoped I would take care of it. And I said, "Of course, the expense of this trip is going to be considerable. It is going to run into a great deal of money, and I would like to have you underwrite a part of that cost." He said, Well, he would try to do what he could. And then I pinned him down and he said, "The most I could advance toward that expense would be \$300.00." Then I told him that wouldn't be sufficient, that the least I could accept would be a thousand dollars. We finally arrived at \$700.00 as the basis, but I would have to wait for the balance of the \$400.00. At that time I agreed that he should be entitled to receive another hundred shares of stock for the money that he would advance toward this expense, and, namely, would transfer 100 shares of the stock that he had in my name and was holding for me, in consideration for this money.

He told me he didn't have the money right then and there, and asked me where he could mail it to. I told him he could mail the check out to the Wake

Development Company in Los Angeles in care of A. L. Roberts, and that I would receive it when I arrived out there. Then I left. I wrote to Mr. Danziger and told him he would receive a check, that I had been unsuccessful in getting any more than \$300.00 out of Mr. Hazelton, and explained to him that when the check came through that he could either cash it or re-forward it to me and I would cash it.

I later received a letter from Los Angeles stating they had received the check for \$300.00 and had put the check in for collection, and after the check had cleared they would send me the usual \$200.00, less wiring charges.

I later did receive the money. [R. 1205-1208.]

Warren then identified Exhibit 34 as his letter. [R. 1209.] He explained the peculiar circumstances of his presence in New York and the mailing of the letter in Los Angeles in this language:

"I wrote this letter to Dr. Hazelton and mailed it out to Los Angeles, California, to Mr. Danziger, and asked him to re-mail the letter to Dr. Hazelton so as to reflect the fact that I was in Los Angeles." [R. 1209.]

### COUNT THIRTEEN.

Count Thirteen is a mail fraud count. The theory of this charge is that defendant Warren induced Hazelton, as is reflected in the evidence summary of Count Twelve, to pay in certain sums of money for travel expense, and to agree to pay in more, all on the representation that Warren was doing certain work in his behalf, necessitating travel to California from New York and on to Trini-

dad. The travel was represented as incidental to getting Hazelton's Trinidad stock included in a pool of stock and profit-sharing notes to be sold to a Mr. Stanley. Actually there was no travel to be done; no sale in contemplation to Stanley.

Dr. Hazelton sent a cashier's check for \$300.00 to Wake. [R. 491.] It is the use of the mails in the collection of this check which is prosecuted in Count Thirteen. The check is definitely identified at R. 489 as the same one referred to in the indictment. See Exhibit 29.

Warren testified at R. 1208 that he received a letter from Wake to the effect that they had received the check and placed it for collection; that after it cleared he would be sent \$200.00. He testified at R. 1209 that he wrote Danziger and enlisted his active aid in perpetrating the fiction on Hazelton.

The bank representative at Los Angeles produced Exhibit 3, the collection record of Bank of America, with respect to the collection of the same cashier's check. It was transmitted to the Philadelphia National Bank in Philadelphia, Pennsylvania, and was paid whereon the \$300.00 collected was credited to the account of Wake Development Company. [R. 398.] Exhibit 92 is a transcript of Danziger's testimony before the Securities and Exchange Commission. It is in evidence as an admission of said appellant. In it, Danziger admits total management and control of Wake Development Company. Alda Faulkner, his sister-in-law whom he described as his right hand in the office, died in 1939. She had no suc-



cessor in authority. Danziger himself was the responsible man in the office at all times and the only one to exercise discretion after the death of Mrs. Faulkner. Hence, the banking of the cashier's check, concurrent as it was with Danziger's cooperation in mailing the fraudulent letter [Ex. 34] is brought directly home to Danziger.

#### COUNT FOURTEEN.

Count Fourteen presents another facet of the transaction involved in Count Two. It is drawn under the mail fraud statute, and repleads the scheme and artifice to defraud which is detailed in Count One. Count Two charges a transmittal in the mail of a certain letter to the victim, Florence S. Lawyer. That letter acknowledged receipt of a check for \$390.00 from Mrs. Lawyer. In Count Fourteen defendants are prosecuted for having caused that check to be deposited in the United States Post Office at Los Angeles to be delivered by mail to the Bank of Manhattan Company, New York.

Reference is here made to the treatment of Count Two for an exposition of the evidence upon the subject of the artifice which made the mailing of the letter unlawful. Necessarily, the same taint applies to the use of the mail in collection of the fruits of the crime as charged in Count Two.

Count Fourteen is further specifically supported by proof of the transmittal of the check.

Exhibit 13 consists of the check together with the collection record of the Bank of America in Los Angeles.

It shows that the Los Angeles Bank received the check for collection and transmitted it to New York for collection; that this was done at the instance of Wake (which operated under the personal management of Danziger), and that upon collection of the check it was credited to Wake.

#### COUNT FIFTEEN.

There is a hiatus in the evidence as to Count Fifteen. The check, transmittal of which is proved, is not identified to the fraudulent transaction. Accordingly, error is confessed as to Count Fifteen.

#### COUNT SIXTEEN.

Count Sixteen is a mail fraud count related to the scheme and artifice described in Count One. The communication described in Count Sixteen acknowledges receipt by Wake of the check referred to in Count Six. The envelope showing transmittal by United States mail, together with the letter described in Count Sixteen, is in evidence. [Exhibit 59.] It was stipulated that the signature is genuine.

#### COUNT SEVENTEEN.

The evidence heretofore summarized applies in its entirety to Count Seventeen which charges that the appellants, together with defendant Warren (named therein as Carter) and others conspired to commit offenses against the United States. It particularizes that they conspired to commit the substantive offenses charged in the preceding counts.

In addition to the foregoing evidence, the Record shows extended correspondence between Danziger and Warren, wherein Danziger supplied Warren with copies of correspondence received from the victims above named; all so that Warren would be guided in his dealings with said victims by his knowledge of their direct correspondence with Danziger. Warren in turn kept Danziger advised as to what approach should be made to the victims in letters to be written them by Danziger. See Exhibits 56, 57, 58, 59, 71, 85A, 85B, 105 and 106 for illustrations of the Warren-Danziger correspondence of this type. At R. 1242 Warren testified that there was a continuous correspondence between himself and Danziger down to the time he, Warren, ceased working on the deal.

The system of supplying each other with copies of correspondence and advices was implimented by use of a code when the names of victims were used. This practice was explained by Warren at R. 1113 as follows:

“During my communications with Mr. Danziger, at one period I suggested we use a code so as not to disclose the identity of people’s names or prospect’s names that might appear in telegrams that we sent backwards and forwards a great deal during our negotiations. The first code used was the entire alphabet, substituting the second letter for ‘A’ or the third letter for ‘A,’ I don’t remember exactly which, but it was in one of those orders. And then after we had used that for some time, because of its difficulty in working it all out, Mr. Danziger wrote me a letter and suggested that he had a better plan, that he would

take a series of code words from the International code book, or some code book that he had, and send them to me, and then I could set up alongside of the codes the various phrases which I would most frequently use in contacting him, and they would represent those phrases. Later we decided that we would also use those code words to designate a certain name, especially where we had occasion to refer to that name more than once."

Danziger frequently used the name A. Faulkner and signed letters to the victims under that name. Exhibit 85B, for instance, contains a copy of a letter written under date of November 2, 1937, to Mrs. Parsons. At R. 1114 and 1115, Warren identified the signature as having been written by Danziger; and admitted that he (Warren) had cut out the name of the addressee from the copy of the letter, so that the identity of the addressee would not be revealed. In the same Exhibit 85-B, is a memorandum from Danziger in which Mrs. Parsons is referred to by the code symbol "NYPQMLQ." [R. 1114.]

The subterfuge was, of course, designed to protect the appellants from an accumulation of documentary evidence.

Exhibit 92 conclusively shows Danziger back of the scene management of the fraud. It admits the facts which establish that Wake and Trinidad were not the substantial concerns represented. It admits that Danziger controlled them. It denies only that Danziger knew Warren by his aliases or addressed him as "OT" or Old Timer.



## ARGUMENT.

It is evident from the foregoing facts that appellant Danziger, the corporate appellants, defendant Warren and other persons engaged in an enterprise to foist a worthless stock upon members of the public. Reference to Exhibit 92, which consists of appellant Danziger's testimony before the Securities and Exchange Commission, demonstrates that there was no real substance to Trinidad International Petroleum, Ltd., and that Wake Development Company, instead of being the fiscal agent of a large and succesful oil producing concern, was but a personal holding company for a relative of Danziger's and that appellant Danziger dominated and controlled the corporations. The entire tenor of the representations made to the victims was such as to lead them to believe either that they were in a select group of persons who were entitled to acquire Trinidad stock and that if they would only acquire it, they could immediately dispose of it at either a substantial profit or one sufficient to wipe out a loss which they had suffered in a prior unfortunate investment; or that they were acquiring stock by way of investment directly into the capital of a large and successful enterprise actually engaged in oil production. Manifestly there was no true market for the Trinidad stock and so-called Profit-Sharing Notes. Victims were induced to acquire the stock believing that Warren, under some one of his aliases, would return and take it off their hands at a substantial profit, whereas in truth there was never an intent to do so. Other victims were induced to purchase the stock believing that their investment added to the capital of the company whereas in fact they were not investing in Trinidad at all but were merely purchasing

the privately owned stock of the Wake Development Company and, instead of finding its way into the treasury of Trinidad, the purchase money found its way only to appellant Danziger, defendant Warren, and their confederates. In the same conversation wherein Danziger apprised Warren that the shares to be sold were not subject to the Securities and Exchange Commission's jurisdiction, he provided Warren with sales material which was cleverly designed to lead the purchaser to believe that the Securities and Exchange Commission was exercising a jurisdiction over the sale of the stock.

From Exhibits 77, 80, 81, 82 and 92, it is apparent that when defendant Warren and appellant Danziger first met in New York in 1935 [R. 1027] Trinidad International Petroleum, Ltd., was not a going business and had as its only assets certain nebulous rights to qualify to promote oil properties in the Island of Trinidad. Wake Development Company was only a holding company in which appellant Danziger's wife owned the beneficial interest. Its only asset was stock of Trinidad International Petroleum, Ltd., which it had acquired in exchange for a promise of services to be rendered by Danziger in the conduct of its affairs. Danziger dominated both corporations. He had formerly been associated with large and successful oil companies but neither Wake Development Company nor Trinidad International Petroleum, Ltd., had anything to offer except that Trinidad did have a right to develop certain oil properties. Wake Development Company was not its fiscal agent and was only interested in liquidating its own holdings in Trinidad International Petroleum, Ltd. In Warren's first meeting with Danziger he was told that Danziger had a deal not subject to any regulations by the Securities and Exchange Act [R. 1295],

that Danziger was a lawyer, and that all the stock to be sold was issued out of the treasury to the Wake Development Company and was a personally owned stock of the Wake Development Company and, therefore, exempt from the Securities and Exchange Act. [R. 1297.] At the outset Danziger gave Warren Exhibit 97, which referred to a permit which Trinidad International Petroleum, Ltd., had received from the Federal Trade Commission to offer to the public 200,000 shares of its treasury stock. [R. 1041.] This exhibit was a proposed letter to be sent out to prospects. Asked by Warren whether these shares authorized by the Securities Division Federal Trade Commission (predecessor to the Securities and Exchange Commission) were what he was to sell, Danziger replied, "No, we are not offering that for sale . . . that is to give you sales propaganda . . . you ought to be able to understand that." Danziger had proposed to Warren that Warren solicit persons who were the holders of various stocks which were worthless (admitted to be worthless by Danziger in Exhibit 92) and to induce those persons to purchase Trinidad International Petroleum, Ltd., stock under the impression that they were dealing with Trinidad International Petroleum, Ltd., through Wake Development Company, its fiscal agent, and were paying in part for that stock with their previously acquired but now worthless stocks of other companies. In commenting on this in his first conversations with Warren, Danziger said [R. 1041]:

"You are giving them the right to buy it at \$3.00 and giving a credit allowance of \$2.00 on their stock, and, in addition to that, we are giving them one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them \$10.00

worth of par value and they are only paying in \$3.00 in cash . . . of course the stock we are selling them, so you will understand it clearly, is the personally owned stock of the Wake Development Company, but, . . . the public won't know the difference, and as far as that is concerned . . . we clear ourselves by specifically stating in here that no part of these issues will be offered to you."

Danziger at that time supplied Warren with a list of persons who had stock in certain inactive companies and [R. 1051] made an arrangement in which Warren quoted him as follows:

"We will go 50-50. In other words, 50% of the money that you take in. I am furnishing the names, and I will furnish the delivery of the stock; all you have to do is make the sale and bring the sale to me."

When Warren found the persons on Danziger's list unresponsive, Danziger asked him to work up an arrangement and Warren proposed working on the shareholders of the Great Eastern Natural Gas Company. After a plan for accomplishing this had been formulated, Warren told Danziger that There would have to be another arrangement worked out between them as to the split up of the commissions, that he Warren, would receive one-third as a commission and one-third for expenses with the understanding that he would pay salesmen's commissions out of the money received by him and that Danziger would receive one-third. [R. 1067.] Warren then told Danziger that he had a salesman whom he considered one of the best security salesmen in the business but that he was a tough proposition to handle,



that he was known to make a lot of exaggerated statements and to not be too careful in what he said about a deal. Danziger replied that he wouldn't worry about that, that what he wanted was to raise money immediately. [R. 1069.] This man, whose true name was Franklin, used an alias in approaching his prospects. [R. 1074.] From that point on holders of shares in Great Eastern Natural Gas Corporation and the Golden Quebec Mining Company were solicited by Warren and his confederates. Warren employed two separate sales techniques. The first one was to contact the prospect and inquire whether he had taken advantage of the offer which had been made to turn in his Great Eastern Natural Gas Company stock in exchange for Trinidad International Petroleum, Ltd. stock. The prospect usually replied that he had not heard of such an offer and was then advised by Warren to write in to the Wake Development Company, which was the fiscal agent of Trinidad, and inquire about it as the stock of Trinidad was selling at par and the prospects were that the company was going to make considerable money. The Wake Development Company replied to the inquiry from the prospects in a negative fashion indicating that the time for a transfer of stock was past. Finally Wake would yield and the transfer would be accomplished, the stock being taken in together with additional monies. These monies were then divided, two-thirds to Warren and one-third to Danziger. In Exhibit 92 there is a statement by Danziger that the stocks which were traded in are still in the office of the Wake Development Company and are believed to have no value.

The second method of operation employed the device of Warren calling upon a prospect, usually one holding stock in Golden Quebec Mines, and asserting that he

understood that the party was the owner of Trinidad stock, that he represented a Canadian firm which was interested in acquiring the Trinidad stock. The prospect, of course, had no Trinidad stock. Warren then explained to the prospect that there had been an arrangement by which the Golden Quebec stock was at one time transferable for Trinidad stock and that if the prospect were able to work out such a transfer with the Wake Development Company, Trinidad's fiscal agent, he would, on behalf of his Canadian principals, be glad to purchase the Trinidad stock as his people were interested in acquiring it at a quoted price. Warren kept the office of Wake advised concerning prospects who might be expected to write in in this regard. Wake would finally grant the transfer privilege to the prospects and transmit Warren's share of the proceeds to him. However, Warren always failed to return to purchase the stock for his purported Canadian principal. In these transactions Warren used aliases and appellant Danziger makes considerable point that he did not know that he was dealing with Warren and that Warren's sales methods were individual pecadillos of the salesmen done without the knowledge, consent or connivance of Danziger. However, the Record shows that during this period Danziger was in constant touch with Warren, addressing him as "O.T.". Records which Danziger submitted to the Securities and Exchange Commission and identified by Warren as written in his own handwriting, address Danziger as "My dear Mr. Danziger" and called attention to prospective transactions which ripened into Counts I and XV of the Indictment. A reading of the Record from page 1111 and of Exhibits 56, 57, 58, 59, 85a, 85b, 105 and 106, indicate a course of communication between

Warren and Danziger which refutes conclusively Danziger's contention that he did not know Warren's method of operation or identity. In this connection it is noteworthy that in Exhibit 92, a transcript of Danziger's testimony before the Securities and Exchange Commission, Danziger recognizing the serious incrimination which reposed in an acknowledgment that he understandingly transacted business with "O.T.", made an emphatic denial of having done so.

This entire course of dealing discloses a conventional stock sale fraud of the type recognized and redressed in such old land-mark cases as *Myers v. United States*, 223 Fed. 919 (C. C. A. 2, 1915), and *Wilson v. United States*, 190 Fed. 427 (C. C. A. 2 1911). See also, *Kaplan v. United States*, 18 F. (2d) 939 (C. C. A. 2, 1927); *Butler v. United States*, 53 F. (2d) 800 (C. C. A. 10, 1931); *Stone v. United States*, 113 F. (2d) 70 (C. C. A. 6, 1940), and *Landay v. United States*, 108 F. (2d) 698 (C. C. A. 6, 1939); *Loneragan v. United States*, 95 F. (2d) 642 (C. C. A. 9, 1938); *Greenbaum v. United States*, 80 F. (2d) 113, 125 (C. C. A. 9, 1935).

Title 18, United States Code, Section 550, robs appellant Danziger of his contention that Warren was the principal. It is apparent that the actual principal in all of the crimes was Danziger and that the corporate defendants and Warren were his confederates. However, even if Warren were the principal offender as Danziger contends,

the clear language of said Code Section binds Danziger to Warren's acts:

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

This case is also one in which the following quotation from *Henderson v. United States*, 143 F. (2d) 681, seems most appropriate:

"It is a familiar principle, which it is our duty to apply, that an appellate court will indulge all reasonable presumptions in support of the rulings of a trial court and therefore that it will draw all inferences permissible from the record, and in determining whether evidence is sufficient to sustain a conviction, will consider the evidence most favorably to the prosecution, *United States v. Manton*, 2 Cir., 107 F. (2d) 834, 839; *Shannabarger v. United States*, 8 Cir., 99 F. (2d) 957, 961; *Borgia v. United States*, 9 Cir., 78 F. (2d) 550, 555. With this principle in mind we come directly to appellant's claim that we should declare that the jury's verdict of guilty cannot stand.

". . .

"The proof in a criminal case need not exclude all doubt. If that were the rule, crime would be punished only by the criminal's own conscience, and organized society would be without defense against the conscienceless criminal and against the weak, the cowardly and the lazy who would seek to live on their wits. The proof need go no further than reach that



degree of probability where the general experience of men suggests that it has passed the mark of reasonable doubt.

“And judges and juries do not begin the solution of the complex problems presented to them from a zero of knowledge. They start with the vast common knowledge and understanding possessed by the people. Applying such common knowledge and understanding to the evidence in this case, can there be the slightest doubt about the essentials of this case!”

The scheme is set forth in Count I of the Indictment. The whole evidence goes to show the existence of the scheme and of the conspiracy charged in Count XVII. Each of the substantive Counts contains a *haec verba* copy of a document alleged to have been transmitted in violation as to Counts I to VI of the Securities Act of 1933, and as to Counts XII to XVI of the Mail Fraud Statute, Title 15, United States Code, 338. The several documents so pleaded are in evidence as follows:

COUNT I	Exhibit 85
COUNT II	Exhibit 56
COUNT III	Exhibit 58
COUNT IV	Exhibit 87
COUNT V	Exhibit 38
COUNT VI	Exhibit 59
COUNT XII	Exhibit 34
COUNT XIII	Exhibit 29
COUNT XIV	Exhibit 13
COUNT XV	Exhibit 9
COUNT XVI	Exhibit 59

## **Evidence of Use of the Mails as Charged in Counts V, VI, XIII, XIV, XV and XVII Is Sufficient.**

The third point argued in appellants' brief is that proof is lacking that the mailing of the matters referred to in Counts V, VI, XIII, XIV, XV and XVII was for the purpose of executing the fraud.

The one case cited for this proposition does not square with the evidence in this case and does not assist appellants. *Kann v. United States*, 323 U. S. 88, concerned a situation wherein there was no use of the mails in the execution of the fraudulent scheme. The defendants deposited the fraudulently obtained check in that case and were given immediate credit. They reaped the fruit of the fraud when the check was credited to their account. The Court held that the subsequent use of the mails by the bank was not in execution of the depositors fraud.

Count V (Securities Act violation) concerns a check drawn on the First National Bank at Farmingdale, New Jersey. A Bank of America employee from the Fourth and Spring Branch, Los Angeles, produced that bank's collection record [Exhibit 5] concerning the check [Exhibit 38]. The check was endorsed by Wake Development Company. It was handled as a collection item and was paid.

Exhibits 2 to 14, inclusive, are further checks and notes including those pleaded in the Indictment, and Bank of America collection records concerning them, all showing that in the Counts referred to by appellants, and in other similar transactions the checks and notes, drawn on eastern banks were placed for collection in the Los Angeles bank. The testimony of William Ladd, the bank repre-

sentative, supports that each of these items were for collection.

Defendant Warren (often referred to in the Record as Carter) testified [R. 1074]:

“Well, our first conversation was that all the checks were to be made payable to Wake Development Company.

Q. ‘And how were they to be cleared?’ A. ‘Mr. Danziger said at that time that he had no means in New York to clear the checks, but that he would send them air mail to Los Angeles and deposit them in the account, or send them for collection through the Wake Development Company asking them to wire Fate, so that he could immediately draw the funds and have the funds rewired to New York so we could pay the salesmen and get our override on these sales.’ ”

The bank collection records indicate definitely that the latter alternative was adopted, that is, the checks were placed for collection.

Although not one of the checks specifically complained of by appellant, a seven thousand dollar check received from Elizabeth Parsons (victim named in Count XV) is treated in Warren’s testimony. The method of handling this check illustrates the substantial difference between the facts in the *Kann v. United States* case and the facts in this case. After relating the circumstances of endorsement of the check [R. 1105], Warren testified:

“Well, my best recollection is that I gave it to Mr. Danziger who agreed to send it by air mail to Los Angeles, California, for collection right away.”

\* \* \* \* \*

[R. 1106]:

“The understanding was that this check would be collected through the Wake Development Company, and the proceeds would either be wired back to Mr. Danziger or to me.

“Q. By Mr. Lucas: ‘Well, at any rate, did you participate in the proceeds of the check?’

“A. ‘Yes, we did.’

“Q. ‘How was that \$7000.00 check divided?’

“A. ‘As near as I can remember, this money was on a slightly reduced proportion to the regular one-third that went to Mr. Danziger. I think he took less than one-third of the \$7000.00 due to the fact that I had explained to him that there were two men in the deal besides myself that had to be paid off in the deal, therefore I figured that under those circumstances he should bear a part of that pro rata expense in making the sale. And as near as I can remember, I think that Mr. Danziger got in the neighborhood of \$1600.00 or \$1700.00 out of this \$7000.00.’ ”

Exhibit 92 is a transcript of proceedings before the Securities and Exchange Commission. In that testimony, as reflected in Exhibit 92 at page 196 thereof, appellant Danziger himself explained the handling of the checks thus:

“Q. ‘Let’s take an instance where Mr. Carmen made a sale of 100 shares of Trinidad stock.

‘Now, what arrangements would he make with reference to that? How much would the purchaser be required to pay for that?’

“A. ‘In money he would be required to pay \$300.00 and a certificate for 100 shares of Great Eastern stock.’



“Q. ‘Now when the check and stock was received by you, what did you do with the check?’

“A. ‘I deposited it in Wake Development for clearance.

\* \* \* \* \*

‘I would take the check over to the collection window and have them put it through for clearance; instead of depositing it direct to the account. I always put it through for clearance.

“Q. ‘What was the purpose of that?’

“A. ‘Because Mr. Carmen (one of Warren’s aliases) was always very anxious to have his money and when we put it through for clearance, I could have them air mail it and wire Fate, whereas, if we deposited it in regular course, it would take ten days, whereas if we put it through for collection, I would get the answer back in two or three days.’

“Q. ‘Once a check was cleared, how would you make the payment to Carmen.’

“A. ‘I would have word from him as to where I was to send the check, whether it was to be a check or order, I was to wire the money. As a rule, I think in every case, the money was wired to him.’

“Q. ‘And how much did you wire to Mr. Carmen on the sales of the 100 shares of Trinidad?’

“A. ‘\$200.00 less the wiring costs.’

“Q. ‘So that his commission was \$200.00 out of every \$300.00 cash realized?’

“A. ‘That’s right.’ ”

These facts are dissimilar to the *Kann* case.

It appears that there the checks were not mailed in the execution of the scheme. The Court in that case said (323 U. S. at 94):

“The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably.”

The Court then distinguished the case from *United States v. Kenofsky*, 243 U. S. 440, a decision dealing with facts parallel in their ultimate analysis to those in this case where appellants carried on a long term scheme necessarily involving frequent systematic use of the bank in the planned *modus operandi*.

It should also be noted that the *Kann* case concerned a prosecution under the Mail Fraud Statute (Title 18, U. S. C. 338). This prosecution is under the Securities Act of 1933 (Title 15, U. S. C. 77q(a), which is broader in its prohibition, *i. e.*,

“(a) It shall be unlawful for any person in the sale of any securities by use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly. \* \* \*.”

The following cases present varying examples of evidence deemed sufficient to meet the use of the mail requirements of the Mail Fraud Statute, Title 18, United States Code, Sec. 338. It should be borne in mind, however, that the first six Counts of the Indictment are drawn under the Securities Act which, as is above quoted, prohibits the use of the mails directly or indirectly in aid of the fraud, whereas the Mail Fraud Statute is somewhat less inclusive. Even under the older and more restricted

Statute, the use of the mails upon which the several substantive Counts are concerned, is sufficient.

*United States v. Fleming*, 18 Fed. 907;

*Giles v. United States*, 84 F. (2d) 943, 946 (C. C. A. 5, 1936);

*Spear v. United States*, 228 Fed. 485, 488 (C. C. A. 8, 1915); Rehearing den. Jan. 24, 1916;

*Barnard v. United States*, 16 F. (2d) 451, 453 (C. C. A. 9, 1926);

*Greenbaum v. United States*, 80 F. (2d) 113, 125 (C. C. A. 9, 1935) (reversed on other grounds);

*Lonergan v. United States*, 95 F. (2d) 642, 643 (C. C. A. 9, 1938).

In *Barnard v. United States*, 16 F. (2d) 451, this Honorable Court stated the following rule:

“The contention that the testimony was insufficient as to certain counts is based upon the alleged insufficiency to prove the use of the mail to execute the scheme. But the evidence was ample to show that the letters in question passed through the mail, and that they were placed in the mail by the agents or clerks of some of the plaintiffs in error. The plaintiffs in error, therefore, caused the letters to be placed in the Post Office to be sent or delivered, within the meaning of the mail fraud statute. (Citing *U. S. v. Kenofsky*, 243 U. S. 440, 37 S. Ct. 438, 61 L. Ed. 836.)”

In *United States v. Fleming*, 18 Fed. 907, the Court said,

“It is not necessary, in order to make out a case under the law, that the defendant shall be the inventor or originator of the scheme or artifice to de-

fraud. \* \* \* If a man adopts some old scheme which another devised and acts upon it, he has made it his own for the purposes of this act. It is also not necessary to show, in order to make out this offense, that the defendants actually, with their own hands, placed a letter or packet in a Post Office. If it appears from the proof that it was done through their agency or direction, by an employee or agent of the defendants, employed and directed for that purpose, it is enough."

In *Davis v. United States*, 55 F. (2d) pp. 550, 552 (C. C. A. 5),

"It was not necessary to show that Davis had actually signed the letter or had personally deposited it in the mail. If it was mailed in furtherance of the scheme, in the usual course of business, and of this there could be no reasonable doubt, it was sufficient evidence to support the conviction."

The several checks pleaded in the Counts of the Indictment challenged by appellants on this ground have all been proved and are in evidence. As matched to the specific counts, they are:

COUNT	EXHIBIT
V	38
VI	59
XIII	29
XIV	13
XV	9

The dates of the several transactions cover a period between May, 1939, in the case of Count XIV to December 26, 1940, in the Count XV transaction: integrating these several check transmittals into the large, continuing fraudulent scheme disclosed by the whole evidence.



## The Conspiracy Charged in the Indictment Is Properly Pleaded.

Appellants make the point that the conspiracy charged in the Indictment herein is duplicitous, disassociated, diverse and unrelated. Although the title of this argument in appellant's brief indicates that the attack is upon the sufficiency of the Indictment, the arguments advanced are almost entirely commentaries upon the evidence. The conspiracy count of the Indictment (Count XVII) is brief. The charging part is in the language of Title 18, Section 88, United States Code. It alleges that the conspiracy was one "to commit divers offenses against the United States, to-wit: the divers offenses charged against the said defendants in the divers preceding counts of this Indictment and made offenses by Sections 17(a)(1) and 5(a)(2) of the Securities Exchange Act of 1933, as amended (15 U. S. C. Sec. 77q(a)(1) and e(a)(2), and Section 215 of the Criminal Code (18 U. S. C. Sec. 338). There then follows a brief description of nine overt acts pleaded as committed in furtherance of the conspiracy. A lack in appellants' brief of any detailed argument as to the sufficiency of the pleading suggests that the attack is without merit in view of the well settled law epitomized in the following language from *Braverman v. United States*, 317 U. S. 49, at 54:

"The allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for 'The conspiracy is the crime, and that is one, however diverse its objects.' *Frohwerk v. United States*, 249 U. S. 204, 210; *Ford v. United States*, 273 U. S. 593, 602; *United States v. Manton*, 107 F. (2d) 834, 838. A conspiracy is not the commission of the crime which it contemplates, and neither violates

nor 'arises under' the statute whose violation is its object. *United States v. Rabinowich*, *supra*, 87-9; *United States v. McElvain*, 272 U. S. 633, 638; see *United States v. Hirsch*, 100 U. S. 33, 34, 35. Since the single continuing agreement, which is the conspiracy here, thus embraces its criminal objects, it differs from successive acts which violate a single penal statute and from a single act which violates two statutes. See *Blockburger v. United States*, 284 U. S. 299, 301-4; *Albrecht v. United States*, 273 U. S. 1, 11-12. The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute, §37 of the Criminal Code. \* \* \*

**The Trial Court Did Not Err in Denying the Motion of Appellants to Dismiss the Indictment for Want of Prosecution, for a Continuance of the Trial, and to Quash the Return of Service on the Corporate Defendants nor in Appointing Counsel to Represent the Corporate Defendants.**

Appellants' assignments and specifications of error grouped under Point V in their brief are directed primarily to the contention that the action of the trial court in each of the particulars assigned or specified as error resulted in the denial of appellants' right to receive "the kind of a trial secured to them by the Constitution of the United States" (App. Br. p. 118). This contention is wholly without substance. None of the matters assigned or specified taken singly, or considered as a group, can lead to the conclusion urged by appellants.

Appellant Danziger's motion for a dismissal of the Indictment for want of prosecution was based entirely upon the fact that his arraignment occurred nearly three years after the return of the Indictment. This fact alone

is not sufficient to support such a motion, and appellants cite no authority in support of the proposition for which they contend.<sup>4</sup>

Indeed, it is settled that even the total absence of an arraignment is not a fatal defect in a criminal prosecution. An arraignment is not necessary for due process of law where the accused, as here, has had sufficient notice of the accusation and an adequate opportunity to defend himself. *Garland v. State of Washington*, 232 U. S. 642. Moreover, the right to a speedy trial guaranteed by the Sixth Amendment to the Constitution has consistently been held to establish the legal right of an accused *to demand* and to be accorded a trial as soon as the orderly conduct of the business of the court will permit. An accused complaining of unreasonable delay must affirmatively demand to be tried. Thus, in *Worthington v. United States*, 1 F. (2d) 154 (C. C. A. 7, 1924) cert. den. 266 U. S. 626, a period of more than six years intervened between the date of the return of the indictment and the time a plea was entered. The defendants sought a dismissal of the indictment alleging that the United States had for more than a reasonable time, namely, eight years, failed, neglected, and omitted to bring the defendants to trial, and failed in any way during said period to prosecute the cause, and claiming that their right to a speedy trial under the Sixth Amendment to the Con-

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<sup>4</sup>*United States v. Henning*, 15 F. (2d) 760 (C. C. A. 9, 1926), cited by appellants (App. Br. p. 119), supports the position of appellee herein rather than that of appellants. The motion there was to dismiss or set for trial thus indicating the necessity of a demand for trial. This Court denied the petition to set for trial as it appeared that appellant there would shortly receive the trial sought.

stitution had been violated. The Government's demurrer to this motion was sustained and, on appeal, the trial court's action in thus sustaining the Government's demurrer was affirmed, the Court declaring (p. 154):

"The record fails to show a single effort made by defendant, or any other defendant, to avail himself of a speedy trial. No facts were pleaded bringing the case within the rule requiring a speedy trial, *i. e.*, that the defendant was incarcerated, or, being at large, had appeared in open court demanding trial, or otherwise. *Defendant's sole reliance was upon the bare fact that the case had not been prosecuted. If the defendant desired a speedy trial, it was his duty to ask for it and we must assume that it would have been granted had he made any effort to procure it. His long and uninterrupted acquiescence in the delay bars his right to complain.*" (Emphasis ours.)

In the instant case the record is silent on any attempt by appellant Danziger, or any of the appellants, to obtain an earlier trial. Here, as in the *Worthington* case, appellant Danziger relies solely upon the bare fact that the case had not been prosecuted. And for the reasons there stated that fact alone, without any affirmative conduct on his part directed toward securing a speedy trial, was insufficient to warrant a dismissal of the indictment for want of prosecution. In his affidavit in support of the motion to dismiss indictment for want of prosecution, appellant Danziger asserts that he is an attorney at law. He further alleges in the affidavit that "affiant from the inception of the proceedings culminating from the filing of the within Indictment recognized that no conduct on his part in connection with any of the matters referred



to in the within Indictment could legitimately form the basis of any criminal proceeding against him and, therefore, assumed that the prosecution of said cause as against affiant was not pressed because of an unwillingness on the part of the United States Attorney's Office to proceed with the cause as against him." To engage in assumptions of that nature rather than appear before the Court and move for relief, is to merely hope without taking action required of one who seeks to avoid prosecution. Although true in the case of any defendant, this is emphatically so as to an attorney at law. Furthermore, the Record discloses a meritorious reason why the case was not brought to trial at an early date. It arose without contradiction [testimony of Warren, R. 1263] that the defendant Willard Eugene Warren was not apprehended until October 20, 1944, in New York City and that prior to that date he had not indicated to anyone his disposition to appear and face trial. It is apparent from a reading of the entire Record that the trial of the case was a long one, considerably involved, and that it was most appropriate to place appellant Danziger, the two Corporations, and defendant Warren on trial at the same time. The arraignment of appellant Danziger occurred November 20, 1944, just one month after the apprehension of his principal co-defendant. Under these circumstances a valid practical reason for deferring the arraignment of appellant Danziger is readily apparent. Had he sought to invite the Court to exercise its discretion on the question of whether he should be kept under an untried indictment during the search for his co-defendant, this appellant could readily have done so; but he did not invite the Court to act then and he cannot appropriately

complain now of a delay which was sufficiently comfortable to himself that he was content to maintain the *status quo*.<sup>5</sup>

Nor did the trial court err in refusing appellant Danziger's application for a continuance. It is an elementary principle of law that granting or refusing a request for a continuance rests within the sound discretion of the trial court. *Hardy v. United States*, 186 U. S. 224; *Brady v. United States*, 26 F. (2d) 400, 403 (C. C. A. 9, 1928) cert. den. 278 U. S. 621; *Crono v. U. S.*, 59 F. (2d) 339, 341 (C. C. A. 9, 1932). In *Crumpton v. United States*, 138 U. S. 361, one of the cases cited by appellants, the Supreme Court in sustaining the exercise of the trial court's discretion with respect to the granting of a continuance goes on to say that (p. 365):

“It is clear that the ruling of the court is not subject to review.”

The Record in this case shows no abuse of discretion by the trial court nor any prejudice to appellant Danziger, or any of the appellants, in the refusal to grant the continuance requested. As a matter of fact the Court below was alert to the possibility of prejudice to the defendants [R. 383-6] and presumably found none for the Record contains no further reference to any such prejudice after the commencement of the trial. Nor, significantly, was there any reference by appellants at any time

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<sup>5</sup>It also appears in the Record that at the time of trial defendants John J. L. Callahan and W. W. Wright had not been apprehended. Callahan was known to be in the Army and the case was dismissed as to him. As to defendant Wright, Government Counsel stated that he had never been contacted and the Government had no feeling that his whereabouts would even be known.

during the trial that their defense had in any way been adversely affected by the denial of the motion for a continuance.

Further, examination of the affidavit filed by appellant Danziger in support of the motion for a continuance, and a reading of the Record in the instant case in conjunction therewith, reinforces the conclusion that no abuse of discretion occurred. As the Supreme Court said in *Isaacs v. United States*, 159 U. S. 487, 489 (1895):

“That the action of the trial court upon an application for a continuance is purely a matter of discretion and not subject to review by this court, unless it be clearly shown that such discretion has been abused, is settled by too many authorities to be now open to question. (Citing cases.)

“. . . The affidavit did not show that the defendant could not make the same proof by other witnesses or that he could not safely go to trial without the testimony of the witnesses in question. In fact, all the affidavit showed that the witness could prove was established by other testimony, including that of the defendant himself. There was clearly no abuse of discretion.”

Corporate appellants' claim that the Court below erred in failing to quash the return of service on said corporations requires less attention and finds its refutation in the Record itself. Appellants argue (App. Br. p. 121) that:

“The record herein reflects that no evidence of any nature was presented to show that at the time of trial any officer of the corporation had been served or was present in court.”

To this there are several answers. The marshal's return states that the summons for the corporate defendants was left with Danziger's secretary and that Danziger was authorized to accept legal service on behalf of said corporations [R. 79, 81]. It is plain that there being no specific statutory provision covering the manner in which jurisdiction was to be obtained over the corporate defendants, the Court "had the right to resort to any appropriate method for that purpose." (*U. S. v. John Kelso Co.*, 86 Fed. 304, 308 (N. D. Cal. 1898).) The service employed in the instant case was plainly appropriate. To say, as appellants do, that the Record contains no evidence that the corporate defendants were present in Court ignores the fact that corporations appear in legal proceedings only by their attorney. *Acme Poultry Corporation v. United States*, 146 F. (2d) 738, 740 (C. C. A. 4, 1944) cert. den. 324 U. S. 860. The corporate defendants in the instant case were represented by counsel throughout the trial. If such representation was unauthorized the burden rested upon those defendants to establish such lack of authority. *Acme Poultry Corporation v. United States*, *supra*. Appellants seek to place upon the Government the burden of establishing the regularity of the service upon the corporate defendants. The reverse is the rule. The truthfulness and regularity of the officer's return is presumed and it is the obligation of the party seeking to invalidate or impeach the service to make a sufficient showing for that purpose. 3 *Cyc. of Fed. Proc.* 407. The Record is barren of any evidence whatever introduced or offered by appellants to impeach or invalidate the service. No such showing of any character was attempted or made.



Corporate appellants urge that they were deprived of a trial by jury in that such trial had not been properly waived. This contention is linked with that just considered and, like that contention, is dissipated upon an examination of the Record [R. 393-4]. Corporate appellants were represented by counsel who waived a trial by jury on their behalf. Further, in Exhibit 92, Danziger's testimony before the Securities and Exchange Commission, he acknowledged personal management of both corporate defendants. That corporate defendants appear by attorney and are bound by the conduct of such counsel has already been adverted to. *Acme Poultry Corporation v. United States, supra.*

Appellants' final argument is that the trial court erred in appointing Danziger's attorney to act as counsel for the corporate defendants. Appellants rely entirely upon *Glasser v. United States*, 315 U. S. 60 (1942). There the appointment of counsel to represent other defendants was made over the objection of the defendant who had originally employed the attorney in question; there was a direct conflict of interest involved and this conflict was shown in the Record. Specific matters were pointed to by the appellant in the *Glasser* case as demonstrating the conflict of interest which existed and the prejudice which followed the Court's appointment of counsel. The Supreme Court examined the portions of the Record referred to and concluded that they indicated a prejudicial conflict of interest which should have been avoided.

None of these factors are present in the instant case. The appointment by the trial court of Danziger's counsel to represent the corporate defendants was expressly made subject to the development during the trial of any conflict of interest between the individual and corporate de-

fendants [R. 338]. No such conflict developed and none was mentioned or referred to either by the trial court or by any of the defendants. Nor do appellants refer to any specific part or aspect of the proceeding, as in the *Glasser* case, to show any divergence of interest between appellant Danziger and appellants Trinidad International Petroleum, Ltd., and Wake Development Company. No conflict of interest being shown, and no prejudice to any of the defendants having resulted, the appointment of counsel complained of cannot serve as a basis for reversal of the convictions obtained. It is noted that the corporate defendants were sufficiently satisfied with counsel's representation at the trial that they have selected him to represent them in this appeal.

It is evident, we submit, from the foregoing, that none of the matters assigned or specified as error by appellants are well taken and that the trial court acted properly on each of the points of which appellants complain.

### Conclusion.

It is respectfully submitted that the Record abounds in substantial and adequate evidence of the guilt of the defendants on all Counts of the Indictment and that it is free from error.

Respectfully submitted,

JAMES M. CARTER,

*United States Attorney,*

ERNEST A. TOLIN,

*Assistant United States Attorney.*

*Attorneys for Appellee.*

No. 10989.

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL  
PETROLEUM, LTD., and WAKE DEVELOPMENT COM-  
PANY,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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Appellants' Reply to Appellee's Amended and  
Supplemental Brief.

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**FILED**

FEB - 4 1947

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## TOPICAL INDEX

	PAGE
Preliminary observations .....	1
Indisputable facts .....	3
Use of aliases.....	14
The government has failed to directly meet the significant issues presented in the opening brief.....	22
Reply to appellee's brief in re conspiracy.....	32
The authorities cited by the government are not in point.. ..	40

## TABLE OF AUTHORITIES CITED

CASES	PAGE
Barrett v. United States, 33 F. (2d) 115.....	43
Beck v. United States, 33 F. (2d) 107.....	43
Butler v. United States, 53 F. (2d) 802.....	42
Freeman v. United States, 20 F. (2d) 748.....	42
Holmes v. United States, 134 F. (2d) 125.....	43
Kaplan v. United States, 18 F. (2d) 939.....	42
Marino v. United States, 91 F. (2d) 691.....	43
Miner v. United States, 57 F. (2d) 506.....	43
Myers v. United States, 223 Fed. 919.....	40, 41
Terry v. United States, 7 F. (2d) 28.....	42
United States v. Corlin, 44 F. Supp. 940.....	43
United States v. Direct Sales Co., 40 F. Supp. 917.....	42
Vernon v. United States, 146 Fed. 121.....	42
Weinger v. United States, 47 F. (2d) 692.....	43
Wilson v. United States, 190 Fed. 427.....	40, 41
Wyatt v. United States, 23 F. (2d) 791.....	42

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### Appellants' Reply to Appellee's Amended and Supplemental Brief.

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#### Preliminary Observations.

In approaching the task of a replication to Appellee's Amended and Supplemental Brief, it at once becomes apparent that Spencer's observation in his Principles of Psychology, that it is impossible while staring at the sun to think of green, is repudiated by the author of said brief, whose views reflected therein are not hospitable to the image of anything antagonistic to the prosecution's supposition that the Indictment in this case perforce establishes that appellants are guilty of the offenses therein charged—albeit a concession is made now for the first time that the conviction on Count 15 is confessedly erroneous. (See Brief, p. 48.)

We shall presently demonstrate that this admission strikes at the very foundation of the whole case against appellants. The prosecution in its inception was based on an indictment procured on the testimony of a single witness who had no direct contact with any of the appellants and hearsay by an S. E. C. investigator who admitted having no knowledge of the facts. [See Assignment of Error #5, R. p. 177, *et seq.*; Op. Br. pp. 5-7.]

The trial was had on a soritical array of conveniently adopted syllogisms along the following plan: The conspiracy was formulated in 1935. None of the matters charged in the indictment has any relationship to the agreement shown to have been entered into at the time; but we have a co-defendant named Carter, etc., who will testify he made representations directly and indirectly through and to various unproduced persons under various pseudonyms which he will *now* reveal for the first time. These activities are not shown by the evidence to have been known to the defendants on trial (appellants). They, however, show reckless abandon and disregard of good intentions on the part of said Carter. Hence, since Danziger admits he met this person years before the transactions charged in the indictment, he and the corporations are necessarily privy to and bound by all the declarations and acts of said Carter.

This Platonian doctrine of *ignoratio elenchi* is adopted as a substitute for legal argument in response to our contentions and irrefutable authorities before this Honorable Tribunal.

It is respectfully submitted by appellant that the all-important query, to-wit: Precisely what was the conspiracy (a) upon which the indictment was procured;



(b) upon which evidence was received at the time of trial; (c) who were the parties to the conspiracy; (d) when did it originate; (e) when did it terminate, if at all; and finally (f) what relationship exists between the conspiracy charged in the indictment, the alleged proofs at the time of trial, and the theories now advanced before this Honorable Appellate Tribunal?

We respectfully submit the answer is—none.

### **Indisputable Facts.**

It is material to note the theory upon which this case was tried. The transcript of the record reflects that the trial judge assumed the position that the defendants were enmeshed in proceedings involving the sale of privately owned stocks of Wake Development Company which they had acquired in 1933 and which they were assertedly engaged in offering for public distribution in 1935. [R. p. 1805.]

The trial judge, by its ruling striking the counts involving the contention that the stock offered in question was subject to registration under the S. E. C. Act, conclusively establishes that the shares of stock in question were privately owned shares of Wake Development Company, one of the corporate defendants, and not subject to registration. [R. p. 1809.]

The record can be canvassed from end to end and no rational conclusion drawn other than the contention by the Government that the conspiracy charged in the indictment is one that was asserted to have been entered into in the City of New York in the early part of 1935.

May we respectfully advert to the inquiry of the trial judge of Government's counsel? [R. p. 573.]

"The Court: When do you claim the conspiracy was formed?

Mr. Lucas: We do not allege a definite date.

The Court: What is your claim now?

\* \* \* \* \*

Mr. Lucas: The conspiracy was formed prior to 1935, at or about that year."

The brief of appellee adopts the theory that the conspiracy in question was one entered into in the spring of 1935 in New York. An examination of appellee's brief tends to advance the theory that the case is predicated on a meeting of appellant Danziger with defendant Carter, etc., in New York in 1935. (Brief, p. 10.) The statement of the alleged conspiracy reflected at said page is as follows: That early in 1935 Danziger met Carter in New York and sought his aid as a security salesman in disposing of shares of T. I. P. stock to members of the public.

It may not be amiss at this point to indicate the proportions reflected in the brief as a whole. As contradistinguished from said contention, the evidence shows that Carter had ascertained from a stock broker in New York that appellant Danziger had a very good oil proposition. [R. p. 1027-28.] The testimony of Carter is to the following effect: He met Danziger in the spring of 1935 and stated: "I understand you have a proposition that I might be interested in. Will you tell me about it?" [R. p. 1033.] The draftsman of the appellee's brief then proceeds to state at page 10 that Danziger proposed to Carter the sale of a block of 165,000 shares of Trinidad Interna-

tional Petroleum stock issued to the Wake Development Company. It will here be noted that no citation to the record for said contention exists. As pointed out in our opening brief, all preliminary discussions with Warren, alias Carter, etc., culminated in an agreement with a *bonafide* concern known as the G. E. Company, wherein it was provided that no more than 20,000 shares of privately owned stock of Wake Development Company would be offered to their stockholders. This agreement was introduced by the Government as their Exhibit No. 82 and appears in the appendix to our opening brief at page 107, the *bonafides* of which agreement has never been disputed by the Government in any wise.

At the risk of repetition, we again call attention to the fact that in the recitals set forth in appellee's brief, the failure to point to evidence by reference to the record is flagrantly manifest. It would rather considerably extend this brief to take the time to point out the various misstatements, although we are endeavoring to focus our attention on the points that are essential for consideration. For example, in the brief at page 10 it is stated that a certain number of shares were returned to the treasury of Trinidad International Petroleum, and from these 165,000 had been issued to Wake Development Company. The facts pertaining to this phase of the case appear solely through the evidence in the transcript, page 693, wherein it is reflected that the 165,000 shares to Wake Development Company came out of the 500,000 shares delivered to the owners of the oil rights transferred to the T. I. P. Company. See also Exhibits R and 112.

Appellee's brief, page 11, proceeds to recite that the T. I. P. Company had "nebulous assets." It will be noted that the vagaries of the assets of said company exist solely in the mind of the author of the brief, for the

reason that nowhere is there any reference to any evidence to support this contention.

It should also be here noted that as distinguished from customary practice, namely, references to evidence adduced at the trial, counsel for the Government in the main, intermittently makes reference to an exhibit,, *to-wit*: Exhibit No. 92, which is a deposition taken by the Securities & Exchange Commission, which consists of hundreds of pages, which deposition was taken by Alan G. Mainland, Examiner for the Securities & Exchange Commission, at which occasion appellant Danziger was produced as a witness for and on behalf of the Commission in an inquest pertaining to Trinidad International Petroleum, Ltd. [See Tr. pp. 679, *et seq.*] This deposition was read into evidence over violent objections of appellants' counsel, as will be noted at *id.* page 638. No attempt is made on the part of the draftsman of appellee's brief to aid the Honorable Justices of this Court or counsel for appellants by reference to any particular page, Government's counsel apparently being content to have your Honors and opposing counsel search the several hundred pages of said transcript to ascertain whether the generalities, conclusions and deductions of said draftsman may in fact be therein found.

It will be noted that in appellee's brief the feeble endeavor to outline the conspiracy entailed rests upon the *ipse dixit* of the defendant Warren, alias Carter, *et al.* As previously noted the indictment was not predicated on any information or facts related by him prior thereto. Stripped of its tinsel garb, appellee's brief reflects a total reliance on the declarations of the despicable character named Warren, alias Carter, etc., as testified to by him at the time of trial.



In our opening brief we pointed out that the documentary evidence which found its way into the record, without even an opportunity for inspection by the defendants' counsel, admittedly reflected a state of facts contrary to the contentions of the Government. When objections were interposed thereto, the trial court inquired of Government's counsel. [R. pp. 774-6.]

"Mr. Lucas: \* \* \* We will have Mr. Carter here, who I believe handled that transaction for the conspirators, and we will offer his testimony on it.

The Court: What will he say, Mr. Lucas?

Mr. Lucas: I will have to say to your Honor candidly I can't recall that I have personally discussed this Lawyer transaction with him.

The Court: What will he say as to similar instances?

Mr. Lucas: I wouldn't attempt to tell your Honor.

The Court: Will he say this was part of a build-up; that is your theory?

Mr. Lucas: That is my theory that he will. Not having discussed the particular Lawyer transaction with him, I wouldn't want to hold that out to the Court.

The Court: Will he say that this was part of a build-up generally in these other transactions?

Mr. Lucas: That is my belief, that he will, yes, your Honor."

Adverting to appellee's brief, page 11, we find the Government in outlining the alleged conspiracy, makes reference to discussions between Warren and Danziger in the spring of 1935 in New York, in which, among other things, allusion is had to the fact that the S. E. C. had authorized the sale of 200,000 shares of Trinidad to

the public at \$5.00 per share. It is conceded by the Government and the said all-important witness Warren, *et al.*, that Danziger had stated that none of these shares were sought to be sold at that time, but that it was the personally owned shares of Wake Development Company which were being offered. The Government admits that the appellants never represented that they were selling any shares other than the personally owned shares of Wake Development Company, and that treasury shares of the Trinidad Company were not being offered.

Appellee's brief proceeds to outline that there were transactions approaching some South American Oil Co. former stockholders and G. E. stockholders; that a particular salesman using an alias was introduced and that a build-up letter, *to-wit*: Exhibit 41, was formulated between said Warren, appellant Danziger and a Mr. DeHart to circularize some G. E. stockholders. We apologetically submit that all of this is manifestly just so much gibberish. At the trial Government's counsel adopted a similar attitude. The record reflects that at that occasion counsel for appellants was objecting to the introduction of matters not mentioned in the indictment, whereupon Government's counsel stated: "We have alleged certain things and said that there were many other representations and we feel that we are entitled to prove every representation made by any defendant as a part of the scheme to defraud, and that we are not held down in the trial of the case to just those representations which we have set forth."

"The Court: I am not going to hold you down."  
[R. p. 458.]

The irrefutable fact in the record is that not a single count in the indictment pertains or relates to any agree-

ment, understanding or so termed conspiracy arising out of the discussions, undertakings or agreements had prior to the departure of Danziger for England. In appellee's brief, p. 18, it will be noted that it is therein admitted that "Danziger went to England after the first sales in 1935 and returned to New York, arriving there September 20, 1937. After Danziger went to New York, Warren communicated with him. There had been sales of Trinidad stock prior to Danziger's departure, *but none were made to Great Eastern Natural Gas shareholders after he left.*"

This confessedly being the position of the Government, in what respect did the letter, Exhibit 41, or right certificate, and, for that matter, the whole program devised in New York in 1935, have to do with any of the counts set forth in the indictment? We previously submitted that the plan agreed on in New York was not one between these appellants and Warren, alias Carter, etc., but rather was with the G. E. Company. The Government, by its evidence in the form of Exhibit 82 and the testimony of Warren, establishes that. The Government in its proofs established that said agreement was actually entered into between the G. E. Company and the Trinidad Company, in which the Commonwealth Trust Co. of Wilmington, Delaware, was the escrow holder, that 20,000 shares [R. p. 1314] were to be made available to former G. E. stockholders, with a right certificate, that Wake Company was to receive \$1.00 and the Dube Company \$2.00, and as contra-distinguished from the recitals in appellee's brief, the Wilmington Trust Company was to collect the checks of the Wake Development Company and clear them and send on the proceeds to Wake Company or to Mr. Danziger in London. [See R. p. 1084.]

To recapitulate, the Government's proof, boiled down to its essence, reveals that (a) there was some reputed talk between Danziger, Carter, DeHart and other respecting the sale of some personally owned shares of Wake Company. These discussions culminated in an agreement in writing [Ex. 82], and not a single count charged in the indictment pertains or relates to the preliminaries or conclusion of the agreement in question. Hence, of what significance are any of these discussions, asserted agreements, or program?

It now becomes significant to note that the record indelibly reflects that if any of the negotiations or various discussions acted upon in New York are reputedly significant, the whole thereof was repudiated and terminated unequivocally long prior to any act or transaction charged in the indictment. [Exs. L and N.]

The Government introduced an exhibit, *to-wit*: No. 104, emanating from England under date of November 16, 1935, in which Danziger declares that he is not interested in any sales in the United States, that he can do better in England. In connection with this phase of the case, we must consider Exhibits L, M and O, which in the order named reflect that certain shares of Wake's personally owned stock were sold prior to receipt of cancellation of the Wilmington contract. These exhibits definitely establish that Danziger from England cancelled all arrangements made prior to his departure in 1935 for London, and that even in respect to transactions consummated prior thereto it would be necessary to communicate with Wake Development Company, one of the defendants herein, in regard to consummation of the then existing transactions. Appellee's brief confesses this situation (p. 18), but endeavors under a strained and unsupported



supposition, to assert that subsequently, while Danziger was in England, Warren advised him that he was going to make arrangements with a Canadian broker. The recitals in said brief, although it refers to Exhibit 95, misstates the documentary and oral testimony, it being conceded that Danziger had cancelled all arrangements entered into in New York in 1935 and having remained in England until 1937, it becomes incumbent upon us to inspect the record to see what arrangement, if any, was thereafter made.

There is an omnibus declaration that Warren (Carter) wrote Danziger that he was going to negotiate with a Canadian broker (App. Br. p. 18). However, the straining of all resources will not disclose an iota of evidence as to what this arrangement was. Consider, for example, the testimony of the main proponent of the Government's case, *to-wit*: Warren, alias Carter, etc., and it will be noted in the transcript [p. 1146] that he has no recollection of ever informing Danziger concerning certain Canadian mining transactions.

Let us now advert to the appellee's brief for illumination. It will there be noted that the synthetic sequence is founded upon a reference to an exhibit, No. 95. Inspection of this exhibit will disclose that it is a typewritten document without date save and except "Tuesday the 6th" and no year and with no signature; and accepting this document as being worthy of consideration, it will be observed that the instrument in question proposes an organization in Canada by means of a sub-lease and proposes the enlisting of Canadian brokers in the prospective proposal.

Before departing from consideration of the contents of page 18 of appellee's brief, it is significant to consider

the concluding observation that the draftsman submits, that what he has proffered establishes a conspiracy to sell worthless stock to simple people and to leave them to believe that a ready market for the stock was in existence. Here it is important to note that no reference is made to any evidence anywhere in the record.

We consider it of tremendous moment to at this point advert to the chief point of discussion at the time of oral argument, *to-wit*: that it appears from the Government's contention at the time of trial and from a reading of the Government's brief that, notwithstanding the total lack of evidence to reflect the contention, it is nevertheless maintained that the stock in question sold to the persons named in the indictment and others was worthless, etc., etc. If this contention is to receive any consideration, it at once becomes apparent that the point urged at the time of oral argument, namely that the trial judge in denying the application of appellants for a continuance, committed prejudicial error, is manifest. Danziger in his application for a continuance (App., p. 100, Op. Br.) pointed to the fact that it was necessary in support of his defense to take the depositions of numerous persons and companies to reflect the following:

(a) that millions of dollars had been spent in the acquisition of the properties in question;

(b) that the assets of said company were of great value;

(c) that in excess of half a million pounds in British money had been expended in the acquisition and development of the properties prior to the rights acquired by appellant Trinidad Company;

(d) that the titles to the leases held by Trinidad Company were *bonafide* and good;

(e) that various British concerns were interested in financing drilling activities;

(f) that in truth and in fact there were over-the-counter markets for the Trinidad Company's stock in England;

(g) that the *bonfides* of the G. E. Company's contract with De Hart and Palmer, who were mentioned in connection with the agreement, Exhibit 82, were genuine and that the documents, as distinguished from the contentions of the Government that they were mysteriously obscured were indeed in possession of a reputable London Company.

All of these matters were expressly asserted in the application for a continuance and were recognized by the trial court as manifestly important, but nevertheless made unavailable to appellants by reason of the refusal to grant the requested continuance.

It at once becomes important to give heed to the following significant questions:

(a) Does the Government, as reflected in its brief, contend that the Trinidad Company did not possess valuable property rights?

(b) That its shares of stocks and notes were not of the value represented?

(c) Were the activities of the appellants aimed at actual development of the assets with a view to fulfilling any representation made on their part to anyone?

If so, the denial of the application for a continuance was manifestly prejudicial, and under the admitted exigencies of the case deprived appellants of their right to a fair and impartial trial.

### Use of Aliases.

A perusal of the briefs submitted on the part of the respective parties to this cause will at once reflect that at the time of trial and in the contentions submitted to his Honorable Judicial tribunal, vital significance is attached to the use of purported aliases on the part of several personalities involved in the transactions. Firstly, considering the alleged aliases sought to be impugned against the integrity of appellants, the names of Levy, Postal and Bishop receive consideration. There is no evidence contradicting the assertion on the part of appellants that Postal and Bishop were officers of Wake Development Company, and that Levy was an actual relative of appellant Danziger. It at once becomes apparent that insofar as these especial names are assumed to be significant, such persons in fact existed and the use of their cognomens were not shown to be unauthorized or utilized in perpetration of any fraud.

It was shown in our opening brief that the Government's principal witness, *to-wit*: Warren (Carter, etc.) confesses that he was known to all of his legitimate confreres under the name of Warren or Carter and that he did not use any other names until after the Chicago trouble, which was some time in 1937. The trial judge inquiring of said witness re his use of the name of Carter [R. p. 1289] elicited from the witness that the reason for the use of said name was not by reason of attempting to conceal his identity, but that he took the name under the accepted practice of legitimate stock salesmen who have a flare for taking a name that will register with their prospects. A wholly unsupported contention submitted to the Honorable Justices of this Court in the brief of appellee is that the appellants were privy to the



utilization by Warren of the various aliases disclosed in his testimony produced at the time of trial. In this connection, it is significant to note that there is not a scintilla of evidence in the record to show that prior to the taking of the stand by Warren his utilization of fictitious names was ever made known to any of the appellants. The witness Warren admitted that he did not use any fictitious names other than the names of Carmen and Carter until 1937, which is some two years subsequent to the alleged conspiracy formulated in New York [R. pp. 1097, 1192, 1194] and the responses elicited from the Court's inquiry. [R. p. 1289.]

It is to be noted that the Government relies apparently for knowledge on the part of appellants on the declarations of Warren admitted at the time of trial to this effect: "I communicated with the Wake Development Company in Los Angeles. I told them that I wanted to make a transaction." However, it will be noted that in not a single instance was any original or copy of such communication presented in evidence, nor its contents related. It is elementary that this is no substitute for legal evidence and no assumptions can on precedent be drawn from such generalizations. In order to remove any doubt of our contentions, we submit that the record will nowhere show:

(a) that there was ever any understanding or agreement that any alias was to be used by anyone;

(b) that any appellant was ever advised that an alias was being used.

Let us illustrate by a clear-cut reference to the record of the fallacy of the Government's position on this particular subject. Let us go directly to the subject of the

use of "O. T." respecting which much ado is made in appellee's brief and at the time of trial. It is true that there are a number of memoranda which constitute part of the maze of documents introduced, which in particular instances have reference to a memoranda in which resort is had to the letters "O. T." However, they cannot be pointed in this record to the identity of any specific person as "O. T." It is admitted that these letters are an abbreviation of the colloquialism "Old Timer." However, the record evidence will fail to establish the identity of "O. T." It is the contention of the Government that "O. T." was Warren. On the other hand it is claimed by appellant Danziger that "O. T." was a person known to him to be named George Carleton. Several memoranda were intended to be directed to a person whose true name was George Carleton. For an understanding of this controversial subject, it is important to consider the following: As previously asserted, there is no evidence to show that Warren (a name disclosed for the first time at the trial) ever communicated the fact to appellants that he was any person other than Carter or Carman, under which names he confessedly was known to all of his business associates. The digest of evidence outlined in our original brief shows that he was the general sales manager in the incipient stages of the transactions. His disclosures at the time of trial reflect that he had under his domination salesmen whose identities were not made known to appellants. We have in mind Robbins, Schaefer, Dawson, Carver, Wright, Callahan and numerous others. [R. pp. 1331, 1346-7.] In the course of undisclosed and legally unrevealed transactions, we find that stock was issued to a W. E. Edwards, an A. L. Roberts and to an Arthur Winslow, to which reference is had in the testi-

mony. However, it requires resort to the occult to reconcile these transactions for which Warren took credit at the time of trial. Nowhere in the record will there be found any direct evidence as to how and under what circumstances these parties became privy to the stock confessedly registered in their names. It is important, however, to note that these stock holdings were acquired while Danziger was in England.

Let us return to the business of "O. T." which is given first attention in the position taken by the Government, and look to the record in relation to the transactions had with Elizabeth T. Parsons, who is the person referred to in counts 1 and 15 of the indictment. [R. pp. 13, 15, 59, 61.] The appellee confesses error as to the latter count 15. (Gov. Br. p. 48.) It becomes important now to give especial attention to the following diagnosis: At the time of trial Warren testified that he had several transactions with the said Mrs. Parsons while Danziger was in England during the years 1935 and 1937. His said transactions were apparently had by communications with the Wake Company in Los Angeles while Danziger was in England, the details of which are left in total obscurity. [See direct evidence of Warren as shown in the Record, pp. 1092, 1379-80, and 1402.] These transactions involved the transfer of stock in some manner acquired in the name of W. E. Edwards and culminated in the proceeds going to W. E. Edwards in a bank account maintained under said name in New York. [See Ex. 106, and R. 1122.] Nowhere in evidence is there a syllable to indicate that Danziger knew anything about these transactions. Moreover, this lady was not a G. E.

Company stockholder and perforce had nothing to do with the alleged arrangement in New York in 1935.

The Government developed at the time of trial [R. p. 1102] that after Danziger returned from Europe, Warren, alias Carter, etc., made no other sales to Mrs. Parsons. The trial court permitted him, over objection, to state that under his direction some other persons were instrumental in contacting her. Let us be careful to focus our attention on this all important series of transactions. May we reiterate that Warren (Carter, etc.) confesses that he never approached Mrs. Parsons after Mr. Danziger returned from England. [R. p. 1102.] The Government at the time of trial attached considerable significance to a transaction involving the sum of \$7,000.00 with this lady named Parsons. This transaction is not mentioned in the indictment, nor the previous transactions with this lady. It was the contention of Danziger that on his return in 1937 from England he had been introduced to a man named Winslow, who had purchased a block of stock in the name of Arthur Winslow in which the \$7,000.00 check of Mrs. Parsons [Ex. 11, R. p. 409] was involved. The Wake Company received \$1300.00 and on cross examination of Warren (Carter, etc.) at the time of trial he advises that he and some associates had privately arranged to acquire a block of privately owned Trinidad stock which had in some manner been passed on to Mrs. Parsons and the Wake Company had received approximately \$1300.00 for this block of stock [R. p. 1350; Op. Br. p. 54], keeping in mind that the uncontradicted record shows that Warren did not make this sale and made no subsequent sales. It taxes our imagination to perceive on what hypothesis the Government predicated its contention that appellants herein were an-



swerable by force of the indictment to the two transactions with Elizabeth Parsons, *to-wit*: the transaction of May 15, 1940, which constitutes part of count 1 of the indictment [R. p. 14] and the transaction of December 16, 1940, which constitutes count 15 of the indictment [R. pp. 59-60], and which latter count is confessed to be predicated on error.

Let it be noted that Warren (Carter, etc.) admits without equivocation that he had no transaction with Mrs. Parsons subsequent to 1937 hence upon what evidence does the Government hinge the transaction with Mrs. Parsons on May 15, 1940, in count 1 of the indictment? Mrs. Parsons did not testify about it; in fact, no one did; and more significantly, the Government confesses error in count 15, which is the December 16, 1940, transaction with the same person, *to-wit*: Elizabeth Parsons.

We have previously mentioned that even the 1937 transaction with Mrs. Parsons, which does not constitute a count in the indictment, was had in respect to stock standing in the name of Arthur Winslow. If we turn to the record of the evidence adduced at the time of trial, it will be observed that upon examination of Warren, whose attention was called to certificates numbers 235, 236 and 241 [R. pp. 1351-52] the stock standing in the name of Winslow in July of 1937, that the venerable Warren (Carter, etc.) confesses that he had no knowledge of those shares of stocks and notes, which the record reflects were part of the 1937 transaction with Mrs. Par-

sons. As previously indicated, Warren was not even interrogated about the 1940 Parsons transactions, which are specified in the indictment in counts 1 and 15. We are not unmindful that we have traversed a circuitous route in getting to our point, namely, that Warren (Carter, etc.) and "O. T." (George Carleton, according to Danziger) were not one and the same.

Let us proceed to demonstrate this by reference to the record. It will be remembered that the Government attached considerable importance to a group of postal money orders that were transmitted to George Carleton from Los Angeles in December of 1940 through the so-termed alias of Levy. [Ex. 17.] Let us look to the transcript [pp. 1212-1214]. It will be noted that these were transmittals of a portion of the \$1500.00 Parsons check, count 15, to George Carleton. When Warren was asked from whom he received these monies represented by the said transmittals, he answers that he doesn't know. [R. p. 1214.] This answer was made after a colloquy between the Court, Government's counsel and appellants' counsel, in which allusion was made to the fact that these postal money orders were obtained upon an application of A. Levy and were manifestly a portion of the proceeds of the Parsons check mentioned in count 15. It appears to us that it would be sophomoric to argue that if Warren (Carter, etc.) was George Carleton, the person to whom these proceeds were transmitted, and that there was any agreement between him and Danziger to transmit these monies under the name of Levy or any other name, that

he would not know from what source these proceeds emanated. Perhaps we are not making our point clear, but we can advert to the fact that Warren (Carter, etc.) admitted that he had no transaction with Mrs. Parsons subsequent to 1937, and we are now dealing with the Parsons transaction in 1940, which forms the basis of the material allegations in counts 1 and 15, the latter being the count concerning which the Government confesses error.

Now, then, let us look to the record [pp. 917-8]. It will there be noted that an inquiry of Danziger was being made concerning the \$1500.00 check (count 15). This inquiry was pursued by reference to a Western Union telegram dated December 8, 1940, which telegram was addressed to George Carleton and significantly signed "O. T."

Danziger, according to the undisputed testimony, was not the author of said telegram. Nevertheless, it appears in uncontradicted form that "O. T." communicated with George Carleton directly with respect to the transaction with Mrs. Parsons, which was the basis of count 15, and which the Government confesses was erroneous, and which, as we have hereinbefore outlined, is too manifest a refutation of the Government's contention (a) that Carleton was Warren, and (b) that when Danziger communicated with Carleton he was communicating with Warren (Carter) as "O. T." The Western Union telegram alluded to [R. p. 917] is reproduced in photostat herewith.

## The Government Has Failed to Directly Meet the Significant Issues Presented in the Opening Brief.

In our opening brief at page 89, we assert in unequivocal nomenclature: "There is no evidence in the record that Carter ever disclosed to Danziger the use by him of any other name than Carter or Carman." We submit that appellee's brief fails to meet this all-important challenge by reference to a scintilla of evidence in the record.

In our opening brief (pp. 99-100) we asserted: "The Government asks us to assume that these appellants had knowledge, and, moreover, had agreed to this manifestly unauthorized and unbridled program of Carter and his confreres. But where is the evidence showing this as a fact?" We fail to note any direct replication to these all-important challenges. It is respectfully submitted that apparently opposing counsel fails to give heed to the well-known legal idiom:

*"Factum unius alteri nocere non debet."*

If we are to assume that the answers to these all-important queries are contained in the appellee's brief under the caption at page 19, reading: "Evidence in Support of Individual Counts," let us at once proceed to an analysis and inspection of what appears in said brief in support of this contention. It will be noted at page 19 of said document that allusion is had to the factual pictures backgrounding the Government's case, that while Danziger was in England during 1936, Warren (we recognize that this individual under his several names is now definitely known to be the person referred to alternately as Carman or Carter, but hereinafter we shall endeavor to refer to him as Warren) contacted a Mrs. Parsons. Then follows a recital of what Warren is reputed to have stated to



Mrs. Parsons and a reference to certain proceeds manifestly procured by him, in which appellants are not shown to have participated. It is important to keep in mind that we are not now dealing with any count set forth in the indictment, but all of these matters are being proposed in support of count 1. Opposing counsel makes no attempt to show that these irrelevant recitals were indeed communicated to any of the appellants who now stand convicted of the offenses charged in the indictment.

The Government, as will be noted at page 20 of the brief, is content to rely on a disconnected group of generalities, such as:

“\* \* \* At the time I wrote in detail to the Wake Development Company office, Aloa Faulkner, and told them what I was doing.”

Is there any legal precedent that may be looked to to justify this form of evidence as being sufficient to support in point of law a conviction for a crime? If we are to assume that this declaration by a co-defendant is legally competent, the question at once arises—As to which defendant? Is it Wake Development Company? Is it T. I. P.? Is it Danziger? Furthermore, what relationship do these *ex parte* declarations have to do with the transaction with Mrs. Parsons in 1940, which transactions incidentally are the ones alluded to in the indictment, counts 1 and 15? The answer to this at once becomes apparent when we recognize that the Government confesses error in the Parsons' transaction specified in count 15. It is also significant that the transaction which forms the basis of count 1 in the indictment is also a

1940 transaction. We have hereinbefore taken the pains to demonstrate the utter lack of relationship in the proof so far as these 1936 and 1937 Parsons' transactions have to the ones charged in the indictment, *to-wit*: in 1940.

The Government concedes that Mrs. Parsons did not testify, and, hence, where is there any substance in the form of evidence to support the theory expounded in connection with these counts?

Advancing now to appellee's endeavor to give support to count 2 in its brief at page 23 *et seq.*, it will be noted that this item pertains to a transaction with a Mrs. Lawyer. Mrs. Lawyer is conceded to have not testified, and here, in conformity with a conveniently adopted pattern, the Government strains to rely on the testimony of Warren. The brief makes some cursory allusions to what Warren testified to assertedly in a conversation with Mrs. Lawyer; also there are some declarations of what he is supposed to have stated to her over the telephone. In an endeavor to augment these manifestly incompetent recitals, opposing counsel presents as a declaration on the part of Warren: "I wrote to the defendants. \* \* \* I do not remember all of the letter, but I suggested certain things in the letter. \* \* \*" (App. Br. p. 25.) Of course, no original or copy of this writing was in this instance, or in any other instance, produced. However, apparently Government's counsel is of the mind that this is legal evidence. We profess ignorance of any legal authority supporting this manifestly incompetent material. Moreover, mind you, this unique form of testimony is supposed to establish guilt on the part of defendants, notwithstanding that the Government on its own motion introduced written documents in respect to this transaction by the corporate defendants, to the following effect;

See Exhibit 56, referred to by the Government, in writing as follows under date of March 16, 1939:

"The stock and notes of Trinidad International Petroleum, Ltd. Company have, in our opinion, much greater speculative possibilities if retained by the stockholder. If your only object in writing to us is to further the sale of any securities you would receive as a result of our exchanging your Golden Quebec Mines stock, then we would not care to have further dealings in the matter."

And under date of April 1, 1939

"All oil securities, as you know, are highly speculative and Trinidad International Petroleum, Ltd., is no exception.

"We are sorry that we cannot serve you but to ask us to assure you that your investment in Trinidad International Petroleum, Ltd. stock and Preferential Profit Sharing Notes would retrieve all your losses and give you a profit of substantial proportions, would be a responsibility we would not care to assume."

To support count 3 of the indictment we look to appellee's brief, page 27. This involves a transaction with a Mr. Harry F. Pitts, who was not produced as a witness. Appellee's brief outlines in support of this count certain declarations testified to by Warren as having been made to Pitts. There is no evidence that these facts were made known to the defendants save and except to the convenient, although legally not recognized mode of relying on the admittedly hearsay statement of Warren (App. Br. p. 28)

"I wrote to Wake Company. \* \* \* Later I heard he had sent a check. \* \* \*"

The writings, the author or source are all similarly left in obscurity.

We now advance to the Government's assertions in support of count 4, appearing in its brief, page 29 *et seq.* This deals with a transaction with one F. A. Russell. This individual did not appear at the time of trial. Again the Government relies for support of this count on Warren. It will be noted in the brief that Warren is shown to have had a conversation with Russell, of course outside the presence of any of the defendants, in which he states that while he was in Canada he obtained some names of South McKenzie Mine owners and that Russell was on the list and that he visited Russell; and then follows a quotation of what Warren told Russell at this visit. (App. Br. pp. 30-33.) It may not be amiss at this point to again demonstrate the impropriety of this form of evidence as proof to sustain the conviction of appellants herein. Apropos of this observation, let us go directly to the record evidence as produced by the Government

"Q. (By Mr. Lucas) All right. Now, you have been using the name South McKenzie Island Mines in this transaction with Mr. Russell; have you prior to this time mentioned that company to Mr. Danziger?  
A. No, I can't say that I did, I can't remember that I did, although I may have.

Mr. Rose: I move that the latter part be stricken.  
The Court: Motion denied.

Mr. Rose: May an exception be noted?" [R. p. 1146.]

Now we come to the treatment of the subject of count 5 by the Government in its brief (p. 34 *et seq.*). This item relates to a transaction with Adelaine B. Skinner, whose testimony appears in the record, page 547 *et seq.*



It is significant in connection with this charge in the indictment to note that the Government's counsel does not rely on the testimony of the lady involved, but in fact he eschews her testimony and apparently is more encouraged by the testimony of Warren concerning the transaction. It will be recalled in our opening brief that we pointed out the fact that the only representation this lady claims to have been made to her was that Trinidad Company owned "potential oil lands in New Mexico." [R. pp. 555-6.] It should be noted that the representations quoted by the Government coming from the mouth of Warren are augmented by hearsay of a henchman of his, named O'Brien, who was not produced as a witness. We have covered this transaction in our opening brief, pages 57-62.

We now come to a consideration of count 6. (Gov. Br. p. 38 *et seq.*) This involves a transaction with one E. Barrie Smith. Here, as previously encountered, we find reliance upon the declarations made on the part of Warren as to what is claimed he stated to E. Barrie Smith, and which are not shown to have been authorized or indeed communicated to the defendants save and except by the quoted declaration in appellee's brief, page 39:

"I did communicate with the Wake Development Company and told them the circumstances of that call."

Of course, the communication was not produced in any form and its contents up to the present time are grounded upon the quoted generality hereinbefore specified.

Following the last count we now observe the Government seeks to take up count 12, which subject appears in its brief at page 40. This count pertains to the subject of Dr. J. Arthur Hazelton, whose testimony appears in

the record at page 449 *et seq.* It will be here noted that the author of the brief makes no attempt to associate two separate transactions, namely, one in 1938 and one in 1940. In the interest of reducing the voluminosity of this reply brief, we respectfully advert to our analysis of the Hazelton transaction as stated in our opening brief at pages 62-77. In passing may we allude to the contention on the part of appellants that the two transactions embraced in counts 12 and 13 with Hazelton are proved to a point of demonstration to be transactions having no relationship whatsoever to the defendants, save that in the course of Warren's dealings with Hazelton, admitted by the latter to be his attorney under a written power of attorney, the transactions were had at the solicitation of a New York broker pertaining to stocks in which **THEY** were interested and sought to be procured by them. The defendants receive honorable mention in these transactions merely in an insignificant way. In the complicated mutual transactions involving stock other than that of the appellants herein, as outlined in our opening brief, Warren became a stockholder under the fictitious name of Roberts, undisclosed to defendants. These counts, upon analysis of the evidence prevalent in the record in support of them, demonstrate how far afield opposing counsel has gone in attempting to saddle upon the defendants these transactions. The testimony discloses that Warren, under the alias of Roberts, had called on Hazelton in 1938 and had represented incidentally in connection with his other deals involving a brokerage firm in New York, that T. I. P. stock was listed on the London Exchange. Hazelton at the time of trial admitted that Wake Development Company had informed him in 1938 that the stock was not on the market and was not listed. [R. pp. 532-3.] He,

nevertheless, on his own motion united with Warren in a joint venture under the name of Roberts. Hazelton states, "Roberts was acting as my representative with power of attorney." [*Id.* pp. 533-4.] As outlined in our opening brief, he was dubious of the *bona fides* of Warren and was in communication with him in New York and actually sent him through the medium of postal money orders direct [see Exhibit 17] several hundred dollars. A letter in the handwriting of Warren, which forms the basis of count 13 of the indictment, discloses a fantastic scheme in 1940 on the part of Warren to bilk Hazelton under the deceitful statement that he (Warren) was coming out to Los Angeles and then he was going to fly to Trinidad and he and a group of associates were going to form a syndicate. This especial piccadillo on the part of Warren, when it is sought to tie in appellants to that transaction, on its face is an absurdity.

There is no attempt to point to the record to show that any of the appellants herein were privy to this flippant and childish nostrum, but the Government nevertheless insists in its brief (p. 45) to claim that the defendants, mind you, the corporations and Danziger, were guilty because Warren testified at the time of trial that he wrote this letter to Dr. Hazelton and mailed it out to Los Angeles and asked that it be mailed to reflect the fact that he (Warren) was in Los Angeles. This is a choice bit of sophistry. Opposing counsel does not claim that the contents of this childish letter were ever disclosed to the defendants or any of them. It is contended that it was mailed out in sealed form here to be remailed to Hazelton. The draftsman of appellee's brief admits that this whole thing was a fiction (p. 46) and vaguely struggles to fasten this fantasy upon Danziger by pure assumption, to-wit:

“\* \* \* was the only responsible man in the office of Wake Development Company.” (App. Br. p. 47.) Of course, no references are had to the record to establish this and we respectfully submit that this strained endeavor on the part of Government’s counsel to fasten responsibility for these personal and mutual relations between the brokerage firm of Phelps in New York, Hazelton and Warren, upon the appellants herein demonstrates their desperation to rely on sheer fantasy as distinguished from legal proofs. May we respectfully ask the Honorable Justices of this Court to refer back to our treatment of this subject in our opening brief, page 62 *et seq.*?

In the brief under consideration, at page 47, count 14 is supported solely by reason of an acknowledgment on the part of one of the corporate defendants of the receipt of a check from Mrs. Lawyer, involving the transaction *ante*, referred to as count 2, namely, the Mrs. Lawyer transaction. Incidentally, this is a propitious time in this discussion to make mention of the fact that the Government contends that apparently, regardless of the *bona fides* of the transactions, if the local bank transmitted the proceeds of any of the several transactions to a bank outside the State of California, that that *per se* involved the use of the mails to defraud.

Since count 15 is admitted to have no substantiation, we now come to count 16, which, according to Government’s counsel, is substantiated by the envelope showing the transmittal of the letter referred to in count 1, which is the Parsons 1940 transaction. We have hereinbefore shown that the 1940 Parsons transactions are predicated solely and exclusively on surmise and conjecture. It would necessarily follow that the transmittal of the let-



ter in question could not, therefore, be urged to constitute evidence of the commission of any offense.

We have now reached the final and concluding count, to-wit: the omnibus so-termed conspiracy charge contained in the indictment as count 17. At pages 48 to 50 of appellee's brief, the draftsman is content to rely upon the so-called evidence "hereinbefore summarized." In this case we meet the similar reliance on the declarations of Warren that he " \* \* \* kept Danziger advised." This is augmented by the contention that a code was used and the observation of opposing counsel that this subterfuge was of course designed to protect appellants from an accumulation of documentary evidence. (App. Br. p. 50.) We cannot at this point resist the urge to volunteer the observation that if appellants were apprehensive to protect themselves from an accumulation of documentary evidence that it was indeed naive on their part to surrender voluntarily to the S. E. C. the thousands of pages of writings that find themselves in this record, including the all omnipotent memorandums respecting "O. T."

In this connection, the Government was likewise fortunate in obtaining from Warren the multitude of mutilated documents that he seemingly had preserved from the incipient stages of this saga that gives rise to the present legal controversy, and peculiarly, notwithstanding his propensities, to follow the old adage: "Never send a letter and never destroy one." The record evidence is totally sterile in so far as producing any scrap of paper which gives substantiation to his convenient claim: "I advised Wake Development Company as follows": "I wrote so and so." Are not these latter orally enunciated vagaries the heart and soul of the Government's case ? ? ?

**Reply to Appellee's Brief In Re Conspiracy.**  
(Their Brief pp. 51-59.)

In this segment of the brief presented in support of the Government's position, we find such generalities as "It is evident from the foregoing facts" that appellants and other persons "engaged in an enterprise to foist a worthless stock upon members of the public." The brief then proceeds to make reference to the several hundred page exhibit, namely, Exhibit 92, in apparent substantiation of this unsupported assertion. There follows a statement that the victims were induced to purchase the stock, believing that their investment added to the capital of the company, whereas they in truth were merely purchasing privately owned stock of the Wake Company.

This is followed by a declaration that Danziger had delivered in 1935 to Warren in New York a document referring to the permit which the Trinidad Company had received from the Federal Trade Commission to offer to the public 200,000 shares of its treasury stock.

We have now reached page 53. The draftsman of the brief then proceeds to quote:

"You are giving them the right to buy it at \$3.00 and giving a credit allowance of \$2.00 on their stock, and, in addition to that, we are giving them one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them \$10.00 worth of par value and they are only paying in \$3.00 in cash . . . of course the stock we are selling them, so you will understand it clearly, is the personally owned stock of the Wake Development Company, but . . . the public won't know the difference, and as far as that is concerned . . .

we clear ourselves by specifically stating in here that no part of these issues will be offered to you.” (App. Br. pp. 53-54.)

The above is followed by a recapitulation of the preliminaries that gave rise to the G. E. transaction.

Some cursory statements follow in transposed form purporting to reflect what Warren stated to various persons mentioned in the indictment and finally a reference to the all-important Exhibit 92.

It occurs to us that this part of the brief is a duplication of a portion of the brief originally submitted and stricken. All that can be said about the argument is that it is an opinion which is not based on any specific and competent evidence anywhere to be found in the record. Indeed, it cannot be supported by resort to surmise and conjecture.

Can it be denied that, if the argument is accepted, it in effect is tantamount to a declaration that the S. E. C. is an incompetent organization, for forsooth it confessedly authorized the corporate defendant T. I. P. to foist upon the public a million dollars' worth of its treasury stock on an unsuspecting public, who were not privy to the fact (Government's Contention) that the company had nothing but nebulous, and had to find, interests or property rights? And does not the argument now being considered furthermore boil down to this: the appellants were necessarily guilty of a swindle because they sold to the purchasers named in the indictment the said authorized \$5.00 par value shares personally owned by Wake Development Company for \$3.00 and threw in the preferential note of \$5.00 par value? It occurs to us at this

point that this is the first time that the author of this brief has ever heard that a crime is committed by selling property belonging to a party for less than it is claimed to be worth.

Considerable attention has been herein given to the lack of association between the so-called scheme originating in New York in 1935, namely, to offer certain rights to the G. E. stockholders and prior thereto certain South American Companies on the basis of an allowance for said companies' shares which were of questionable value as part of the purchase price of Wake's privately owned T. I. P. shares. We have already made reference to the fact that appellee in its brief, page 18, states:

“There had been sales of Trinidad stock prior to Danziger's departure, but none were made to Great Eastern Natural Gas shareholders after he left.” [R. p. 1090.]

We have shown that the transactions set forth in the indictment have no relationship to this plan. No rights of this nature or literature purporting to puff the wares of T. I. P. shares are shown to have been transmitted to any of the persons mentioned in the indictment. Moreover, these were persons in the main who sporadically wrote in to trade certain Canadian Mining Company shares on diversified deals for Wake's personally owned T. I. P. stock. We have shown that there is no established plan or agreement respecting these transactions. We have shown that when endeavor is had to look to proof as distinguished from Warren's recitals of what he claims he said to these respective persons, none is to be found. At this point it occurs to us that the draftsman of appellee's brief makes much ado about the statement



purportedly having been made by Warren, and we have nothing but his word for the fact that he on his own account is reputed on occasion to claim that Wake Company was the fiscal agent of T. I. P. Exactly what is sought to be conveyed is not clear. In the opinion of the author of this brief, it is dubious that this self-confessed humbugger is cognizant of the meaning of the term "fiscal agent." We do, however, find in the maze of documents in evidence an occasional reference to the Wake Company being an "underwriter" of T. I. P. We respectfully submit that this relationship is not subject to attack.

We are not going to request that Your Honors read all of the exhibits in the case, which suggestion was offered by opposing counsel in the brief previously stricken, but we do respectfully submit that the S. E. C. did authorize a million dollars' worth of treasury shares to be sold, approved of a prospectus, and had a complete file of the entitlements and hereditments of the defendants herein involved, and their personnel. We refer of course to Exhibit A. The Honorable Justices of this Court are of course fully cognizant of the requirements of the Securities and Exchange Commission. As part of Exhibit A, the document dated October 1, 1934, in part reads:

"(4) The underwriting contract between Wake Development Company and Trinidad International Petroleum, Ltd. as referred to in Registration Statement is still effective."

In the hysteria manifested at the time of trial, as shown in our opening brief, where literally thousands of pages of documents found their way into evidence

without comment and frequently without inspection, and with the gratuity of the trial judge that

“It depends on how lazy the judge is. The Appellate Court judge reading the record, if he is too lazy to look for the exhibit, he won’t look.” [R. p. 476.]

we respectfully submit that the case as a whole would be more understandable if the documents in evidence had in the first instance been read and considered in relation to the facts, as distinguished from surmise.

Government’s counsel has overlooked what appears to us to be a very important item, namely, that if the documents in evidence *are read*, they will strike down the oft-reiterated but unestablished contention that appellants were in any instance acting in bad faith. While we are contemplating this claim, may we make reference to the record that we can find even in the vicious recitals of Warren the following:

“Q. How long after that did you next meet Mr. Danziger? A. Well, I think Mr. DeHart went up and completed the contract, and I don’t think—

Q. That was outside of your presence? A. I think it was done outside of me, I don’t think I was there when he actually signed it. I might have been somewhere near, but I don’t think I was right there at the time of the signing.

Q. So far as your memory goes, though, the actual agreement entered into on behalf of the Great Eastern through Mr. DeHart, and Mr. Danziger and others, was signed outside your presence? A. I am

sure it was. I am positive I wasn't present when he signed the contract.

Q. After this contract had been signed, did you have a talk with Mr. Danziger? A. Yes, I had a lot of them.

Q. Tell us those that you remember? A. Well, I couldn't do that unless you will ask me specifically on what one occasion. I try to give you the general background of the whole thing, Mr. Rose, and if you will be specific here and tell me—I just couldn't go on and tell you about a lot of conversations with Mr. Danziger, because I had a great many conversations with Mr. Danziger.

Q. In these several conversations that you had with Mr. Danziger preceding his departure for England, had he told you anything other than what you have already related here affecting the character and nature of the properties involved? A. Yes, I will say that Mr. Danziger always tried to tell me that the properties were very good.

Q. Did he ever tell you anything to the contrary? A. No, he never did.

Q. From your observation as a man of experience— A. He told me they were very fine properties.

Q. Did he ever tell you anything otherwise? A. What do you mean 'otherwise'?

Q. Well, did he ever tell you he had changed his mind about the character or value of these properties? A. Never to my knowledge. He always boosted them.

Q. Didn't he tell you he expected to become very wealthy out of the actual oil production? A. Well, he might have said that." [R. pp. 1308-1310.]

Now let us consider whether the S. E. C. in the first instance was informed concerning the *modus operandi* of the acts of Wake Company in disposing of its T. I. P. privately owned shares in the manner indicated. The Honorable Justices of this Court are respectfully referred to section 20 of the Securities Act of 1933, as amended. One of the major contentions of appellants is that they, in so far as any acts chargeable to them are concerned, were acting in good faith.

Appellants claim that contemporaneously with the matters alluded to in the indictment, they were at all times cognizant that the S. E. C. was advised, informed and knew, in so far as any acts on the part of appellants were concerned, that the method and mode of disposal of Wake Company's T. I. P. shares, which is claimed by the Government to constitute criminal conspiracy, was *bona fide* and not in violation of the Securities Act. In substantiation of this claim, we respectfully refer to the record of evidence in the case at bar wherein the S. E. C.'s representative, who participated in the proceedings preliminary to the indictment and subsequently at the time of trial, discloses the following:

[Testimony of Allen G. Mainland, R. p. 975] \* \* \*

“Q. By Mr. Rose: You ascertained, did you not, the fact that these Great Eastern Stockholders would send in a request to exercise such rights to the Wake Development Company? A. [R. p. 976.] They did either in '36 or early in '37. I couldn't say exactly.

Q. All right. They had before them the fact that the stock was being sold at various prices below \$5.00 in that manner? A. Yes.



Q. That an allowance was being made for the so-called shares in the Great Eastern Gas Company?

A. Yes. \* \* \* They had before them the fact that rights had been offered to All Americas Petroleum, South-American Oil Fields, and Great Eastern Natural Gas.

Q. All companies that were more or less defunct?

A. I now believe they were. I don't know whether the Commission knew so at the time.

Q. And a certain allowance was made for their so-called defunct stock? A. Yes."

[R. p. 978] \* \* \* (The following question was read):

"Didn't he say that the mode of doing business of the sale of Wake Development Company's holdings of Trinidad stock had been investigated as to the manner that I have previously outlined to you, namely, an allowance for shares in a defunct company, the exercise of the so-called rights and the letters going into the Wake Co. asking for permission to exercise the rights and so forth?

The Witness: I don't recall Mr. Danziger saying so; but I do know that the Commission had that information. \* \* \*

[R. p. 981] \* \* \*

"Q. By Mr. Rose: You are familiar with Section 20 of the Act? A. I can't say that I am.

Q. Well, take a look at it. A. After reading the Act I think I am fairly familiar with that.

Q. Wasn't this section discussed between you and Mr. Danziger? A. I wouldn't say that it wasn't. I don't recall ever discussing it with him, but I

wouldn't want to be too positive about it. It may have been.

Q. He told you that no injunction had ever been applied for or issued? A. He may have. I knew there hadn't been. \* \* \*

From the foregoing it cannot legitimately be urged that appellants were not justified in looking to the S. E. C. for a stop order if the procedure on their part, insofar as it relates to anything giving rise to the charges contained in the indictment, was irregular or improper.

### **The Authorities Cited by the Government Are not in Point.**

Under the exigencies prevailing in this case as known to this Honorable Court, we have been limited by time, allotted in preparing and submitting this reply brief; that is to say, we have had no time in the remotest degree comparable to the time taken by the Government to submit its brief. We would be remiss in our duties if we submitted no replication to the legal authorities claimed by appellee to be pertinent and controlling.

In the Government's brief, p. 57, reliance is had upon the number of cases which are merely mentioned by name and citation. In the case of *Myers v. U. S.*, 223 Fed. 919, and in the case of *Wilson v. U. S.*, 190 Fed. 427, the facts backgrounding both of these cases are the very antithesis of the situation admitted to exist by the Government in the case at bar. We have previously quoted from the Government's brief at page 54 the acknowledgment that the stock involved in the transactions giving rise to

the indictment was the personally owned stock of Wake Development Company, and that oral and written declarations that the same was not treasury stock is established to a point of demonstration. The Government claims that notwithstanding these clear-cut pronouncements, nevertheless the persons named in the several counts of the indictment were perhaps deceived into the belief that they were augmenting the treasury of T. I. P. and were getting original treasury certificates. It is sheer sophistry to claim that where a person has been told orally and in writing: YOU ARE NOT RECEIVING ANY TREASURY STOCK, to claim, nevertheless, that such persons believed that they were. Here, like in other instances illustrated ante, the argument is not based on facts, but, on the contrary, contrary to the facts. Let us not lose sight of the all important matter that the sales involved in the several counts in this indictment are not supported by any prior misrepresentations made through the medium of the U. S. mails. The so-termed false representations are those personally attributed to Warren, who by the proofs showed in the first place no authority; in the second place no sanction; in the third place no knowledge on the part of the appellants; and, finally, no ratification, but on the contrary, in all instances where the utilities of the Government were used, an utter and unequivocal refutation.

It would serve no purpose to give any extended discussion on this point. The *Myers* case, *supra*, involves the case of written representations of a sale of treasury stock with express pronouncements that the proceeds were to go into the company's treasury.

The *Wilson* case, *supra*, involved a similar situation.

In the case of *Kaplan v. U. S.*, 18 Fed. (2d) 939, the representations made were all by mail and there was a clear-cut fictitious offer similarly by mail.

In *Butler v. U. S.*, 53 Fed. (2d) 802, cited by appellee, there was a representation made that certain notes were secured by cattle and the fact was that there was no security. And may we reiterate that insofar as the charges contained in the indictment under which appellants were tried are concerned, there is no evidence of the use of mails respecting said transactions of any representation. There is no evidence that any representation made by mail was not indeed as true as Holy Writ. The authorities cited are not subject to any criticism other than that they are based on facts diametrically opposed to those in the case at bar.

We would like to conclude with the following cursory references to authorities.

It is well settled that presumptions cannot be based on presumptions. *Vernon v. U. S.*, 146 Fed. 121; *Freeman v. U. S.*, 20 Fed. (2d) 748.

The basis of the conspiracy is what has been agreed to, not what has been done. *U. S. v. Direct Sales Co.*, 40 Fed. Sup., 917.

Proof of crime committed by one or more of a number of co-defendants, wholly apart from and without relation to others conspiring to do the things forbidden, cannot support a conviction. *Wyatt v. U. S.*, 23 Fed. (2d) 791; *Terry v. U. S.*, 7 Fed. (2d) 28.

In our opening brief we made numerous references to legal authorities that evidence of what salesmen said to prospective clients in the absence of evidence showing



authority or ratification is not binding upon the principal. We now again refer to *Beck v. U. S.*, 33 Fed. (2d) 107; *U. S. v. Corlin*, 44 Fed. Sup., 940; *Barrett v. U. S.*, 33 Fed. (2d) 115.

In hastening a conclusion of this brief, we respectfully request consideration of the authorities originally submitted in our opening brief. We cite the cases of *Holmes v. U. S.*, 134 Fed. (2d) 125, and *Marino v. U. S.*, a decision of this Honorable Court, in 91 Fed. (2d) 691; and likewise, if we have not previously mentioned it, we refer to the case of *Weinger v. U. S.*, 47 Fed. (2d) 692.

All of the authorities are cases that have been given consideration by this Honorable Circuit Court.

May we respectfully conclude with the observation that the overt acts charged in the indictment were not in furtherance of the conspiracy frantically sought to be maintained as existing on the part of the appellee in its brief, but is based on contentions that have consistently been held to constitute a departure from well recognized authorities. We submit the case of *Miner v. U. S.*, 57 Fed. (2d) 506.

For the reasons herein presented and upon the grounds not expressly herein specified, but mentioned in the oral argument and in our opening brief, we deferentially state that the judgments of conviction should be reversed, with instructions to dismiss the indictment. We submit that the manner of trial, the manner of the reception of proofs, the manifest departure from due process, and in all events on legal precedent, require a reversal.

Respectfully submitted,

A. BRIGHAM ROSE,

*Attorney for Appellants.*



# WESTERN UNION

WESTERN UNION  
TELEGRAPH COMPANY

WESTERN UNION  
TELEGRAPH COMPANY

and the following telegram subject to the terms on back hereof, which are hereby agreed to

George Carlton,  
C% Western Union,  
New York City

Will be alright.

OT

Charge: MU 5638

LOS ANGELES CALIF.  
DEC 8 1940

done  
4:30  
agreed  
4:32





No. 10989.

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

JACOB MORRIS DANZIGER,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

REPLY TO PETITION FOR REHEARING.

---

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## TOPICAL INDEX

	PAGE
Preliminary .....	1
I.	
Defendant has not been denied due process of law under the Fifth and Sixth Amendments to the Constitution of the United States .....	1
A. The indictment was procured by due process of law.....	1
B. Defendant has not been denied his right to an early trial..	3
C. Appellant's assertion that he was compelled to waive his right to trial by jury is untrue.....	8
D. Appointment of appellant's attorney to represent the corporate defendants did not prejudice appellant.....	10
E. The court did not err in denying appellant's motion for a continuance .....	12
II.	
Appellant is not entitled to challenge the action of the grand jury in indicting him.....	17

## TABLE OF AUTHORITIES CITED

CASES	PAGE
Ballard v. United States, 329 U. S. 187.....	19
Bowles v. United States, 73 F. (2d) 772.....	2
Brady v. United States, 26 F. (2d) 400; cert. den. 278 U. S. 621 .....	14
Crono v. United States, 59 F. (2d) 339.....	14
Crumpton v. United States, 138 U. S. 361.....	14
Glasser case, 315 U. S. 60.....	11
Goodman v. United States, 108 F. (2d) 516.....	2
Hardy v. United States, 186 U. S. 224.....	14
Jung Quey v. United States, 222 Fed. 766.....	3
Marino v. United States, 91 F. (2d) 691.....	3
Phillips v. United States, 201 Fed. 259.....	5
Pietch v. United States, 110 F. (2d) 817.....	7
Poffenbarger v. United States, 20 F. (2d) 42.....	5
Redman v. Squire (C. C. A. 9, May 16, 1947).....	20
Rose v. United States, 149 F. (2d) 755.....	3
Sherman v. United States, 80 F. (2d) 629.....	2
United States v. Gale, 109 U. S. 65.....	18
United States v. Manton, 107 F. (2d) 834.....	3
United States ex rel. Whitaker v. Henning, 15 F. (2d) 760.....	7
Worthington v. United States, 1 F. (2d) 154; cert. den. 266 U. S. 626.....	6

## STATUTES

New Federal Rules of Criminal Procedure, Rule 12(b)(3).....	18
United States Code, Title 18, Sec. 556(a).....	18
United States Constitution, Sixth Amendment.....	8



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## REPLY TO PETITION FOR REHEARING.

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### Preliminary.

Petitioner has filed his Petition for Rehearing after affirmance of the judgment against him and has augmented the petition by a Supplement to Petition for Rehearing wherein he raises a new point. By direction of the Court, Appellee submits this, its reply to the said petition.

### I.

**Defendant Has Not Been Denied Due Process of Law Under the Fifth and Sixth Amendments to the Constitution of the United States.**

#### **A. The Indictment Was Procured by Due Process of Law.**

Appellant complains that the indictment was procured solely on hearsay evidence as reflected by the record. The record does not substantiate this claim. The point is based upon speculation and conjecture. A reading of the record does not disclose the text of the proceedings before

the Grand Jury. It does not disclose any effort to reach the text of the proceedings before the Grand Jury. Appellant bases his appeal on this point on his Assignment of Error No. 5 [R. 177]. It appears from a reading thereof that counsel for Appellant had developed in the course of his cross-examination of Mr. Mainland and Miss Skinner that they had appeared before the Grand Jury and that as their testimony in Court fell within his definition of hearsay, he inferred that they had given testimony of the same character before the Grand Jury. Appellant's attack must fail because there is no showing as to what evidence the Grand Jury acted upon. It must be assumed that the Court followed the well established rule that the evidence taken before the Grand Jury is confidential matter to which the accused has no right of access. *Goodman v. United States*, 108 F. (2d) 516, at 519 (C. C. A. 9, 1939).

There was no motion to quash the indictment until the close of the Government's evidence. It is elementary that such a motion cannot be entertained unless it is made before the jury is sworn to try the case. *Sherman v. United States*, 80 F. (2d) 629 (C. C. A. 4, 1935).

It is also well established that a motion to quash the indictment is addressed to the discretion of the trial court and is not subject to review. *Bowles v. United States*, 73 F. (2d) 772 (C. C. A. 4, 1934). Furthermore, the testimony of the witnesses Mainland and Skinner as given at the trial was not hearsay. The Record does not disclose and no record could properly disclose what they testified to in the Grand Jury room. Mainland was the Government investigator who testified at the trial to the taking of a statement from Appellant. Said testimony at the trial

amounted to a recitation of admissions made by Appellant to the witness. The witness Skinner was a victim of the conspiracy and of the substantive offense described in Count 11. She testified at the trial to representations made to her by fellow conspirators of Appellant. What she testified to in the Grand Jury room is undisclosed. Even if she gave the same evidence to the Grand Jurors, it was proper evidence to be received in a conspiracy case under the well established rule that the acts and declarations of a conspirator when made in aid of the conspiracy and during the time the conspiracy was active, are binding upon all conspirators. *United States v. Manton*, 107 F. (2d) 834 (C. C. A. 2d, 1938); *Marino v. United States*, 91 F. (2d) 691 (C. C. A. 9, 1937); *Rose v. United States*, 149 F. (2d) 755 (C. C. A. 9th, 1945); *Jung Quey v. United States*, 222 Fed. 766 (C. C. A. 9, 1915).

**B. Defendant Has Not Been Denied His Right to an Early Trial.**

Appellant in this Petition for Rehearing alleges that no attempt had been made to arraign him for a period of approximately three years after the filing of the indictment, and that the Government failed to give him an early trial. The Constitutional right which defendant asserts has been infringed is not a right to have a case dismissed or reviewed. The right is very definitely, clearly and narrowly stated in the Constitutional Amendment itself to be a right to a speedy trial. Appellant's attack is entirely aside from the basis upon which he seeks to give it validity. He does not claim that he ever asked for an early trial or a trial at any time. He simply complains that he was tried at all. In a footnote to the Court's Opinion, reference was made to the fact that the Government did not

proceed to trial shortly after the return of the indictment because defendant Carter (Warren) was not apprehended until October, 1944, and two other defendants, John J. L. Callahan and W. W. Wright, never were apprehended. This is a practical explanation for delay. Petitioner asserts that there is not a scintilla of matter in the Record to reflect that Callahan and Wright were connected with any transaction involved in the case. That challenge is empty of any meaning in considering Appellant's present plea because it must be apparent that inasmuch as Callahan and Wright were never tried, it would have been an unnecessary, vain and delaying practice for the Government to have introduced evidence connecting them with the crime. It was Appellant and the two corporations dominated by him who were on trial and not Callahan or Wright. There is no answer to the fact that defendant Carter (Warren) was not apprehended until October, 1944, and that Appellant Danziger was arraigned exactly one month later. The first thing that he did within the record thereafter was to ask for a continuance which was granted him. Appellant and Carter (Warren) were brought to trial approximately three years after the filing of the indictment, and about three months after Carter was apprehended. At the outset of the trial Carter (Warren) withdrew from the trial by the entry of his plea of guilty [R. 77]. However, it is the uniform statement of the cases upon the subject that a defendant who claims that his right to a speedy trial has been infringed must have demanded a trial. Appellant here is making his



argument without existence of that foundation. Among the cases which treat of this subject is *Phillips v. United States*, 201 Fed. 259 (C. C. A. 8, 1912). The Court said:

“Counsel for Phillips also moved the court to dismiss the case and discharge the defendant, because the United States had failed to bring him to trial at an earlier date. This motion was also overruled. The sixth amendment to the Constitution of the United States provides that the accused shall enjoy the right to a speedy and public trial; but the record does not show that Phillips ever asked for a trial during the four years that the indictment was pending, and we do not think a defendant can acquiesce to the postponement of his trial, and then, when the same is called, move that the case be dismissed because he had not been given a speedy trial. It is his duty, if he wants a speedy trial, to ask for it; and we must presume that he would have been granted an earlier trial if he had so asked. There was no error in the ruling of the court in this respect.”

The language of this opinion indicates that there is a presumption that an earlier trial would have been granted had Appellant requested it. The Record is devoid of any indication of such a request by the Appellant now before this Court. See also, *Poffenbarger v. United States*, 20 F. (2d) 42 (C. C. A. 8, 1927):

“It is urged that the defendant has not been given a speedy trial, to which he is entitled under the Constitution of the United States. The record indicates that the defendant was indicted while in prison and was not brought to trial until after his release from the federal penitentiary. The record does not show

a demand for a trial on the part of plaintiff in error, or that any resistance was made by plaintiff in error to a continuance of the case, or that anything was done upon his part to secure a speedy trial. It is our view that the defendant acquiesced in the postponement of his trial by not asking for a speedy trial. This court said in *Phillips v. United States*, 201 F. 259, 262: 'We must presume that he (defendant) would have been granted an earlier trial if he had so asked.' "

In *Worthington v. United States*, 1 F. (2d) 154 (C. C. A. 7, 1924), cert. den. 266 U. S. 626, the convicted defendant was not brought to trial until eight years after the return of the indictment. The convicted defendant made a motion to dismiss the case because of the delay. The Government demurred to the motion. The demurrer was sustained and the motion denied.

"The principal assignment of error is the ruling of the court in refusing to dismiss the defendants upon their plea, and sustaining plaintiff's demurrer thereto. The record fails to show a single effort made by defendant, or any other defendant, to avail himself of a speedy trial. No facts were pleaded bringing the case within the rule requiring a speedy trial; *i. e.*, that the defendant was incarcerated, or, being enlarged, had appeared in open court demanding trial, or otherwise. Defendant's sole reliance was upon the bare fact that the case had not been prosecuted. If the defendant desired a speedy trial, it was his duty to ask for it, and we must assume that it would have been granted, had he made any effort to procure it. His long and uninterrupted acquiescence in the delay bars his right to complain."

See *Pietch v. United States*, 110 F. (2d) 817 (C. C. A. 10, 1940):

“The contention is made that it was prejudicial to the rights of appellant to be tried more than seven years after the termination of the transactions on which the indictment was predicated. The indictment was returned before limitation had run. The United States Attorney stated in person and by letter to counsel for some of the accused that he did not intend to try the case, and that it was his purpose to dismiss it. But appellant never made demand for trial. He did not object or protest to the court respecting the delay. He filed a motion to dismiss the indictment on account of the delay, but the motion was filed more than three years after the return of the indictment, and it was a motion to dismiss—not a demand for trial. A person charged with a crime cannot assert with success that his right to a speedy trial guaranteed by the Sixth Amendment to the Constitution of the United States has been invaded unless he asked for a trial. In the absence of an affirmative request or demand for trial made to the court it must be presumed that appellant acquiesced in the delay and therefore cannot complain.”

The case of *United States ex rel. Whitaker v. Henning*, 15 F. (2d) 760 (C. C. A. 9, 1926), upon which Appellant relies, when read in entirety does not lend any weight to Appellant's claim. In that case, the Appellant was a convict serving a prison sentence. While so confined he moved the District Court to dismiss the then pending indictment against him or to set the case for trial. The Court set the cause for trial but did not proceed with the trial because the defendant was absent by virtue of his

confinement in a distant prison. Upon noting that the defendant would shortly be released from imprisonment and could, therefore, present himself for trial within a very brief period of time from the date of the decision, the Circuit Court denied his petition for a writ of mandamus.

It appears from the language of the foregoing cases that the right to a speedy trial is a right that must be asserted by a defendant and that in the absence of such assertion by a demand for trial, he waives the right. The right is not treated in the Sixth Amendment to the Constitution to the United States as a right to dismissal but as a right to trial. Whether there was a speedy trial or not, Appellant in this case had a trial although he never requested one and he had it without effort on his part to bring the case to trial.

**C. Appellant's Assertion That He Was Compelled to Waive His Right to Trial by Jury Is Untrue.**

The only treatment of the contention in his Petition for Rehearing that he was compelled to waive trial by jury is the statement that the possibility of a recess during the trial so that Appellant could take depositions induced Appellant to waive trial by jury. It makes no difference to a court what might motivate a defendant to waive trial by jury provided, of course, that the waiver is knowingly and understandingly made and is not made under misrepresentation or by reason of force. However, if Appellant did waive trial by jury for the reason now asserted in his Petition for Rehearing, he kept it secret from the Court for his counsel stated:

“I want Your Honor to know, as I indicated to opposing counsel, if we were required to go to trial,



everybody would fare better by having the case, of the complexities involved herein, tried by Your Honor without a jury."

See also Record 392:

"Mr. Lucas: I think we should at this time, if we are going to proceed without the jury, have the waiver of the jury properly signed by all concerned, if the court please.

The Court: Let me make it plain it makes no difference to me whether the trial is with or without a jury.

Mr. Lucas: I think counsel wanted to proceed without a jury. I am perfectly willing to proceed without a jury, and it is entirely up to the defendant. I want to get the government on record in that regard.

Mr. Rose: I made it clear, Your Honor, we have agreed to try this case, if we are obliged to try it, without a jury. I don't think I want to supplement that by repeating what I have said before.

Mr. Lucas: You used the word 'obliged,' Mr. Rose.

Mr. Rose: I have already gone on record as waiving trial by jury."

Record 394:

"Mr. Rose: The only difficulty I find here, Your Honor, is waiving by the corporate defendants.

The Court: I understand. Is there a local rule on it? Mr. Rose, you sign and have Mr. Danziger sign, and I will accept your oral statement as to the corporate defendants.

Mr. Rose: Very well, Your Honor."

**D. Appointment of Appellant's Attorney to Represent the Corporate Defendants Did Not Prejudice Appellant.**

Appellant urges strenuously but not very clearly that there was some error in the Court's appointment of Mr. Rose to represent the corporate defendants. There is no explanation as to wherein Appellant was prejudiced. There was a peculiar identity of interest in the three defendants on trial. Trinidad International Petroleum, Ltd. was a corporation which the evidence discloses was dominated and controlled by Appellant and he was at all times either its President or Chairman of its Board. [See Exhibit 92.] Wake Development Company was a private holding corporation controlled and solely owned by Appellant's wife except for a period of time when it was owned by another relative. [Exhibit 92.] There was no assertion at the time of the appointment that there was a conflict between the interests of these parties. The Court did not force Mr. Rose upon the Appellant. Appellant had already retained Mr. Rose. The Court appointed that attorney to represent the two corporations. It is strikingly inconsistent for this attorney now to appear before the Court, after having won reversal of the judgment of convictions against the two corporations for whom he was appointed and for whom he appeared not only at the trial but in the handling of the appeal, and assert that there was any real dissatisfaction or that representation of these three closely allied defendants was inconsistent.

The Court was very clear in its appointment of Mr. Rose to represent corporate defendants that the appointment was expressly made subject to the development during the trial.

Record 388:

“Mr. Rose, I will appoint you to act as attorney for the corporate defendants subject to developments at the trial that may cause you to feel that your interest has become adverse.”

From that point on to the close of the trial and through proceedings on imposition of sentence there was no intimation that the interests of the corporate defendants and appellant Danziger were in any way adverse. Exhibit 92 is a transcript of testimony given by appellant Danziger before the Securities and Exchange Commission. It discloses a very close relationship between Danziger and Trinidad. He testified in the exhibit that he was President or Chairman of the Board at all pertinent times and that he had managed the affairs of the corporation ever since its formation. In the same exhibit, he testified that Wake Development Company was a personal holding company in which his wife was a beneficial owner except during a period of time when Alda Faulkner, a relative and right-hand in his office, was the beneficial owner.

In the *Glasser* case, 315 U. S. 60, relied upon by Appellant, there is a considerable variance from the facts of the case before this Court. The attorney appointed in that case informed the Court that the defendant did not wish to be represented by him. In colloquy between court and counsel it was pointed out that there was a divergency of interests. There was an opposition from the client whose attorney was appointed to represent another defendant. After considerable representation to the court that everyone was dissatisfied, the Court stated to defendant Kretske that if he was not satisfied he would have to hire another lawyer and that the Court would proceed forthwith with

the selection of a jury. Appellant has not indicated a single instance which occurred at the trial wherein he was prejudiced by the fact that counsel of his own selection was delegated to represent other defendants which, although they were separate defendants, were corporations dominated and controlled by the individual appellant. Appellant was sufficiently satisfied with Mr. Rose's case management to continue him as counsel after all other appellants have been eliminated.

**E. The Court Did Not Err in Denying Appellant's  
Motion for a Continuance.**

The Record does not contain any clearly defined motion for a continuance. In his pleading entitled "Motion to Dismiss Indictment for Want of Prosecution, etc." [R. 68] Appellant does not include a motion for continuance (nor does he demand trial) but contents himself with a motion to quash basing that motion entirely upon want of prosecution. In support of the motion there appears, at page 69, an affidavit of Appellant wherein there is recited the fact of the delay in bringing him to trial; some reference to allegations in the indictment; and an allegation that persons who would be in a position to establish that Appellant's actions had been *bona fide* and lawful were at the time of the making of the affidavit in places involved in the war. There is no representation by affidavit or otherwise as to exactly what these persons would have testified to, nor as to their identity nor as to where they were located. For all that appears in the Record, they might have been located at places involved in the war but still accessible for purposes of deposition. The recitations of the affidavit do not touch upon this subject and in contenting himself with the recitation that unidentified per-



sons existed in unrevealed places could exculpate him by testimony, the nature of which was not recited, Appellant left the matter before the Court in such an uncertain state of the Record that a court cannot properly be accused of an abuse of discretion in denying a continuance. If there is any motion for continuance in the Record or any affidavit in support thereof, Appellee has failed to discover it. It does appear that there was a pre-trial conference of some kind [R. 76] and that at that conference it was ordered that the trial date of January 16, 1945 stand. It appears that there was a court reporter present who reported the proceedings [R. 76]. Appellant, however, has not caused the record of those proceedings to be transcribed and made a part of the Record in his appeal. When the case was called for trial [R. 378] Appellant did not make any motion for continuance. There was considerable colloquy between court and counsel concerning the corporate defendants, who are no longer before this Court, having prevailed in their appeal. At page 383 of the Record the Court indicated a disposition to proceed with the trial of the case as follows:

“I am quite sure I shall ask you to go to trial, Mr. Rose, with the mental reservation I stated, should it develop at this trial that the interests of your client have been seriously affected by the recent arraignment, and time was not thus allowed for taking important testimony, important to your defense, by deposition, and the other things that are necessary to show diligence and the like under the authorities. It seems to me only the trial could develop that. It is the kind of a thing that can't be passed on in advance.” [R. 385.]

It is an elementary principle of law that granting or refusing a request for a continuance rests within the sound

discretion of the trial court. *Hardy v. United States*, 186 U. S. 224; *Brady v. United States*, 26 F. (2d) 400, 403 (C. C. A. 9, 1928), cert. den. 278 U. S. 621; *Crono v. United States*, 59 F. (2d) 339, 341 (C. C. A. 9, 1932). In *Crumpton v. United States*, 138 U. S. 361, one of the cases cited by Appellant, the Supreme Court in sustaining the exercise of the trial court's discretion with respect to the granting of a continuance goes on to say that (p. 365):

“It is clear that the ruling of the court is not subject to review.”

The Record in this case shows no abuse of discretion by the trial court nor any prejudice to Appellant Danziger, or any of the appellants, in the refusal to grant the continuance requested. As a matter of fact the Court below was alert to the possibility of prejudice to the defendants [R. 383-6] and presumably found none for the Record contains no further reference to any such prejudice after the commencement of the trial. If Appellant or his counsel had any occasion to accept the invitation of the trial court to grant a continuance so that depositions could be taken prior to the resting of their case, they gave no indication of it to the trial judge. A claim made now on appeal that there was prejudice in this regard is empty of any force whatsoever when the Record of the trial discloses that the trial judge had indicated a willingness to consider the matter of a continuance of proceedings after the trial had progressed. This Appellant did not ask the trial judge to do so and is, therefore, without standing to ask this Court to hold that the trial judge committed error for the trial judge was not granted an opportunity to act upon a request for further continuance.

Even if Appellant were in a position to claim that witnesses residing in distant places involved in the war could exonerate him, it is difficult to see that said witnesses were in a position to assist him as to certain of the counts upon which he has been convicted. The conspiracy and scheme to defraud and evidence in support of the individual counts is set forth in detail commencing at page 10 of Appellee's Amended and Supplemental Brief. It will, therefore, not be repeated here. It should be noted, however, that the fraud pleaded and proved as to certain of the counts was encompassed within a very narrow transaction which did not involve any of the Appellant's activities abroad or the corporate defendants' activities abroad. Count 2 concerns a fraud practiced upon a Mrs. Lawyer. Appellant's co-defendant Carter (Warren) called upon Mrs. Lawyer and told her that he represented a Canadian concern which would like to buy her Trinidad International Petroleum notes. He represented that it was his understanding that she had acquired such notes in exchange for certain stock which she had held in the Golden Quebec Mines Company. He represented further that inasmuch as his conversation with her disclosed that she had not exchanged her Golden Quebec stock for Trinidad stock, that if she would do so he, as a representative of certain Canadian interests, would buy the Trinidad stock from her. He told her that if she had not made the transfer and was not in a position to sell Trinidad stock to him, that she should write to defendant Wake Development Company. Thereafter he made follow-up telephone calls to said victim. He wrote to the Wake Development Company, which all of the evidence has shown was operated under the direct supervision of Appellant and was so closely controlled by him that

within its small office a letter to that corporation was in effect a letter to Appellant. He advised Wake about Mrs. Lawyer. He even wrote directly to Appellant Danziger and made suggestions to him as to how to deal with Mrs. Lawyer. Danziger accepted his suggestions and embodied them in a letter. The count is one wherein a victim was induced to buy stock in reliance upon a fraudulent offer to purchase it from her. This type of fraud is also involved in Counts 3, 4, 5 and 6. The evidence thereon is digested in Appellee's Amended and Supplemental Brief. Whether the transactions referred to in said counts occurred or did not occur, was a matter for the Court to determine upon the comparative credibility of the co-defendant Carter (Warren) and Appellant, aided by the documentary evidence submitted in corroboration of Carter's testimony. Whether the defendant corporations were or were not engaged in drilling oil wells in Trinidad had no bearing upon what happened in Yonkers, New York, where the victim Lawyer resided, and Los Angeles, California, from where Appellant Danziger mailed fraudulent letters to her. The sentences upon the counts involving the fraud of the type immediately above related were all made to run concurrent with the sentences imposed upon fraud of the broader type involving the machinations of the corporate defendants and Appellant in a larger field. Appellant in his Petition for Rehearing does not refer to any representation ever made to the trial court which indicated the existence of witnesses who would rebut the evidence offered in support of fraud perpetrated wholly within the United States concerning not the stability of the corporations but based upon a false representation to persons that if they would but acquire the stock, it would be immediately repurchased from them at a profit to them.



II.

**Appellant Is Not Entitled to Challenge the Action of the Grand Jury in Indicting Him.**

Appellant now, for the first time, in his Supplement to Petition for Rehearing filed after the Petition for Rehearing itself, attempts to impeach the action of the Grand Jury in returning an indictment against him upon an allegation that women were not included in the panel of the grand jurors at the time the indictment was returned and that they were intentionally and systematically excluded. Such an attack made for the first time in a supplement to a petition for rehearing comes too late.

The only attacks made upon the indictment in the District Court were the lame attack heretofore treated, *i. e.*, that the indictment was returned upon hearsay and [R. 140] in the motion in arrest of judgment wherein the form of the indictment and a plea of the statute of limitations were relied upon and in the "Motion to Dismiss Indictment for Want of Prosecution, etc." [R. 68]. The motion, although labeled as above indicated, does use the words "should be quashed" but relates them entirely to the claim that the quashal should be upon the ground of want of prosecution. There is no reference to the Grand Jury in the motion or the affidavit in support thereof. If during the time this case was before the District Court, Appellant had any dissatisfaction with the manner in which the Grand Jury had been drawn, he kept it to himself. He did not raise it by motion to quash, by plea in abatement, by oral comment to the Court, or a motion in arrest of

judgment. Section 556(a) of Title 18, United States Code, clearly specifies the time at which a defendant shall assert any dissatisfaction which he has in the matter of the impaneling of the Grand Jury:

“No plea to abate nor motion to quash any indictment upon the ground of irregularity in the drawing or impaneling of the grand jury or upon the ground of disqualification of a grand juror shall be sustained or granted unless such plea or motion shall have been filed before, or within ten days after, the defendant filing such plea or motion is presented for arraignment; and from the time such plea or motion is filed and until the termination of the first term of said court beginning subsequent to the final judgment on such plea or motion and during which a grand jury thereof shall be in session, no statute of limitations shall operate to bar another indictment of any defendant filing such plea or motion, or of any other defendant or defendants included in the indictment to which such plea or motion is directed, for the offense or offenses therein charged. (Apr. 30, 1934, c. 170, Sec. 1, 48 Stat. 648.)”

This statute is the embodiment of the common law rule enunciated in *United States v. Gale* (1883), 109 U. S. 65, 67-70. The effect of said statute has been modified slightly by Rule 12(b)(3) of the New Federal Rules of Criminal Procedure. However, said rules were not in effect during any of the time that this case was before

the District Court and a modification made in said rules would not assist this Appellant for they simply provide:

“Time of Making Motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.”

Even under the New Federal Rules of Criminal Procedure it cannot be fairly contended that the raising of this issue for the first time in an amendment to a petition for rehearing is a reasonable time within which to assert a grievance of this kind. The case of *Ballard v. United States*, 329 U. S. 187, does not assist Appellant. In approaching the question in that case the Supreme Court stated:

“\* \* \* This issue was raised by a motion to quash the indictment and by a challenge to the array of the petit jurors because of intentional and systematic exclusion of women from the panel. Both motions were denied and their denial was assigned as error on appeal. The jury question has been in issue at each stage of the proceedings, except the first time that the case was before us. At that time the point was not assigned or argued. But the case was here at the instance of the United States, not at the instance of the present petitioners. As we have said, there were other issues in the case obscured by the question brought here by the United States and which had not been passed upon below or argued before this Court. Consequently, when we remanded the case for consideration of the remaining issues by

the Circuit Court of Appeals, the jury issue was argued. The Circuit Court of Appeals did not hold that it had been waived. That court passed upon the issue concluding that there was no error in the exclusion of women from the panel. 152 F. 2d, p. 944, and see dissent at p. 953. Under these circumstances we cannot say (and the Government does not suggest) that petitioners have lost the right to urge the question here. \* \* \*

See, also:

*Redman v. Squire* (C. C. A. 9, May 16, 1947).

Respectfully submitted,

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